Chapter LXXVI.

THE IMPEACHMENT AND TRIAL OF THE PRESIDENT.

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2408. The impeachment and trial of Andrew Johnson, President of the United States.

The impeachment of President Johnson was set in motion by a resolution authorizing a general investigation as to the execution of the laws.

The House referred to the Committee on Reconstruction the evidence taken by the Judiciary Committee in the first attempt to impeach President Johnson.

A proposition to impeach President Johnson was held to be privileged, although at this session a similar resolution had been considered and negatived.

Secretary Stanton communicated directly to the House the fact of the President's attempt to remove him.

The first attempt to impeach Andrew Johnson, President of the United States, failed on December 7, 1867,¹ Thereafter the subject was debated at length on December 13² in the Committee of the Whole House on the state of the Union, but not with any proposition for action pending, and rather with reference to the questions of law and fact raised in the preceding discussions.

On January 22, 1868,³ Mr. Rufus P. Spalding, of Ohio, moved that the rules be suspended in order that he might present the following resolution:

Resolved, That the Committee on Reconstruction be authorized to inquire what combinations have been made or attempted to be made to obstruct the due execution of the laws, and to that end the committee have power to send for persons and papers and to examine witnesses on oath, and report to this House what action, if any, they may deem necessary, and that said committee have leave to report at any time.

The motion was agreed to, yeas 103, nays 37; and the resolution being before the House, motions to lay it on the table, to fix the day to which the House should stand adjourned, and to adjourn were successively disagreed to. Then, under operation of the previous question, the resolution was agreed to, yeas 99, nays 31.

On February 10⁴ Mr. Thaddeus Stevens, of Pennsylvania, by unanimous consent, submitted the following resolution; which was agreed to by the House:

Resolved, That the evidence taken on impeachment by the Committee on the Judiciary 5 be referred to the Committee on Reconstruction, and that the committee have leave to report at any time.

On February 21^6 the Speaker laid before the House the following communication:

WAR DEPARTMENT.

Washington City, February 21, 1868.

SIR: General Thomas has just delivered to me a copy of the inclosed order, which you will please communicate to the House of Representatives.

E. M. STANTON, Secretary of War.

Hon. Schuyler Colfax, Speaker House of Representatives.

EXECUTIVE MANSION,

Washington, D. C., February 21, 1868.

SIR: By virtue of the power and authority vested in me, as President, by the Constitution and laws of the United States, you are hereby removed from office as Secretary for the Department of War, and your functions as such will terminate upon the receipt of this communication.

You will transfer to Bvt. Maj. Gen. Lorenzo Thomas, Adjutant-General of the Army, who has this day been authorized and empowered to act as Secretary of War ad interim, all records, books, papers, and other public property now in your custody and charge.

Respectfully, yours,

Andrew Johnson.

TO HON. EDWIN M. STANTON, Washington, D. C.

¹Second session Fortieth Congress, Journal, p. 53; Globe, p. 68.

² Globe, pp. 172-193.

³ Journal, pp. 259-262; Globe, pp. 784, 785.

⁴ Journal, p. 330; Globe, p. 1087.

⁵ It was on this evidence that the first attempt to impeach had been made.

⁶ Journal, p. 382; Globe, pp. 1326, 1327.

Mr. Elihu B. Washburne, of Illinois, moved that the communication be referred to the Committee on Reconstruction. This motion was agreed to without division, although there were suggestions that the letter should go to the Judiciary Committee or to a select committee.

On the same day, and thereafter, Mr. John Covode, of Pennsylvania, rising to a question of privilege, presented this resolution:

Resolved, That Andrew Johnson, President of the United States, be impeached of high crimes and misdemeanors.

Mr. Fernando Wood, of New York, having objected, the Speaker ² said: It is a privileged question.

Then, on motion of Mr. George S. Boutwell, of Massachusetts, the resolution was referred to the Committee on Reconstruction.

2409. President Johnson's impeachment, continued.

The second and successful proposition to impeach President Johnson was reported from the Committee on Reconstruction.

The second investigation of the conduct of President Johnson was exparte.

The full report justifying the proposition to impeach President Johnson.

On February 22³ Mr. Thaddeus Stevens, of Pennsylvania, presented from the Committee on Reconstruction the following report:

That in addition to the papers referred to the committee, the committee find that the President, on the 21st day of February, 1868, signed and issued a commission or letter of authority to one Lorenzo Thomas, directing and authorizing said Thomas to act as Secretary of War ad interim, and to take possession of the books, records, and papers, and other public property in the War Department, of which the following is a copy:

EXECUTIVE MANSION, Washington, February 21, 1868.

SIR: Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War ad interim, and will immediately enter upon the discharge of the duties pertaining to that office. Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully, yours,

Andrew Johnson.

To Brevet Maj. Gen. Lorenzo Thomas,

Adjutant-General of the United States Army, Washington, D. C.

Official copy respectfully furnished to Hon. Edwin M. Stanton.

L. THOMAS.

Secretary of War ad interim.

Upon the evidence collected by the committee, which is herewith presented, and in virtue of the powers with which they have been invested by the House, they are of the opinion that Andrew Johnson, President of the United States, be impeached of high crimes and misdemeanors. They therefore recommend to the House the adoption of the accompanying resolution.

Resolved, That Andrew Johnson, President of the United States, be impeached of high crimes and misdemeanors in office.

¹ Journal, p. 385; Globe, pp. 1329, 1330.

² Schuyler Colfax, of Indiana, Speaker.

³ Journal, p. 390; Globe, p. 1336.

This report was signed by Messrs. Stevens, George S. Boutwell, of Massachusetts, John A. Bingham, of Ohio, C. T. Hulburd, of New York, John F. Farnsworth, of Illinois, F. C. Beaman, of Michigan, and H. E. Paine, of Wisconsin. There were no minority views, Mr. James Brooks, of New York, who dissented, stating that he had not had the time to prepare them. Mr. James B. Beck, of Kentucky, also a member of the committee, dissented.

2410. President Johnson's impeachment, continued.

The committee reporting the second proposition to impeach President Johnson disagreed as to the grounds thereof.

The question whether impeachment must be confined to indictable offenses was in issue as to the second report favoring impeachment of President Johnson.

Argument of Mr. Thaddeus Stevens that impeachment is a purely political proceeding.

The resolution was debated at length on February 22 and 24.¹ It appears from this debate that the specific act most relied upon by the committee was violation of the law known as the tenure-of-office act,² and which provided in its first section:

That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any office, and shall become duly qualified to act therein, is, and shall be, entitled to hold such office until a successor shall have been in like manner appointed and duly qualified, except as herein otherwise provided: *Provided*, That the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster-General, and the Attorney-General shall hold their offices respectively for and during the term of the President by whom they have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate.

And in its sixth section:

That every removal, appointment, or employment made, had, or exercised contrary to the provisions of this act, and the making, signing, sealing, countersigning, or issuing of any commission or letter of authority for or in respect to any such appointment or employment, shall be deemed and are hereby declared to be high misdemeanors, and upon trial and conviction thereof every person guilty thereof shall be punished by a fine not exceeding \$10,000, or by imprisonment not exceeding five years, or both said punishments, in the discretion of the court.

It was urged generally that the removal of Mr. Stanton and the appointment of General Thomas ad interim constituted specific violations of this law. Members of the House who had by their votes assisted in defeating the first attempt at impeachment, supported the pending resolution on the ground that it was based on an offense indictable under Federal law. Thus, Mr. James F. Wilson, of Iowa, who had submitted the minority views on which the defeat of the former attempt was based, said ³ in this case:

The considerations which weighed upon my mind and molded my conduct in the case with which the Committee on the Judiciary of this House was charged are not to be found in the present case. The logic of the former case is made plain, not to say perfect, by its sequence in the present one. The President was working to an end suspected by others, known to himself. His then means were not known to the law as crimes or misdemeanors, either at common law or by statute, and we so pronounced. He

¹Globe, pp. 1336, 1360, 1382, 1393.

² Act of March 2, 1867, 14 Stat. L., p. 430.

³ Globe, pp. 1386, 1387.

mistook our judgment for cowardice, and worked on until he has presented to us, as a sequence, a high misdemeanor known to the law and defined by statute.

Others who had voted against impeachment in the former instance expressed similar views. Mr. Thaddeus Stevens, of Pennsylvania, in closing the debate, indicated, however, that he did not consider the case as narrowed to this point alone:

The charges, so far as I shall discuss them, are few and distinct. Andrew Johnson is charged with attempting to usurp the powers of other branches of the Government; with attempting to obstruct and resist the execution of the law; with misprision of bribery; and with the open violation of laws which declare his acts misdemeanors and subject him to fine and imprisonment; and with removing from office the Secretary of War during the session of the Senate without the advice or consent of the Senate; and with violating the sixth section of the act entitled "An act regulating the tenure of certain civil offices." There are other offenses charged in the papers referred to the committee which I may consider more by themselves.

In order to sustain impeachment under our Constitution I do not hold that it is necessary to prove a crime as an indictable offense, or any act malum in se. I agree with the distinguished gentleman from Pennsylvania, on the other side of the House, who holds this to be a purely political proceeding. It is intended as a remedy for malfeasance in office and to prevent the continuance thereof. Beyond that, it is not intended as a personal punishment for past offenses or for future example.

Impeachment under our Constitution is very different from impeachment under the English law. The framers of our Constitution did not rely for safety upon the avenging dagger of a Brutus, but provided peaceful remedies which should prevent that necessity. England had two systems of jurisprudence—one for the trial and punishment of common offenders, and one for the trial of men in higher stations, whom it was found difficult to convict before the ordinary tribunals. This latter proceeding was by impeachment or by bills of attainder, generally practiced to punish official malefactors, but the system soon degenerated into political and personal persecution, and men were tried, condemned, and executed by this court from malignant motives. Such was the condition of the English laws when our Constitution was framed, and the convention determined to provide against the abuse of that high power, so that revenge and punishment should not be inflicted upon political or personal enemies. Here the whole punishment was made to consist in removal from office, and bills of attainder were wholly prohibited. We are to treat this question, then, as wholly political, in which, if an officer of the Government abuse his trust or attempt to pervert it to improper purposes, whatever might be his motives, he becomes subject to impeachment and removal from office. The offense being indictable does not prevent impeachment, but is not necessary to sustain it. (See Story's Commentaries, Curtis on the Constitution, Madison, and others.) Such is the opinion of our elementary writers, nor can any case of impeachment tried in this country be found where any attempt was made to prove the offense criminal and indictable.

2411. President Johnson's impeachment, continued.

Discussion as to whether President Johnson was justified in attempting to test the constitutionality of the tenure-of-office law.

It was urged against the proposed resolution that the tenure-of-office act was unconstitutional, and therefore that the President had committed no specific violation of law. This view was set forth ² most forcibly by Mr. James B. Beck, of Kentucky, a member of the Committee on Reconstruction:

All questions growing out of the combinations and conspiracies lately charged upon the President were ruled by the Reconstruction Committee to be insufficient and were not brought before this House. And the sole question now before us is, Is there anything in this last act of the President removing Mr. Stanton and appointing Adjutant-General Thomas Secretary of War ad interim to justify his impeachment by this House?

I maintain that the President of the United States is in duty bound to test the legality of every law which he thinks interferes with his rights and powers as the Chief Magistrate of this nation. When-

¹ Globe, p. 1399.

² Globe, pp. 1349-1351.

ever he has powers conferred upon him by the Constitution of the United States, and an act of Congress undertakes to deprive him of those powers or any of them, he would be false to his trust as the Chief Executive of this nation, false to the interests of the people whom he represents, if he did not by every means in his power seek to test the constitutionality of that law, and to take whatever steps were necessary and proper to have it tested by the highest tribunal in the land, and to ascertain whether he has a right under the Constitution to do what he claims the right to do, or whether Congress has the right to deprive him of the powers which he claims have been vested in him by the Constitution of the United States, and that is all that he proposes to do in this case.

Now, if that is the object, and the only object, of the President, as I contend the facts show, then I can hardly bring myself to believe that any set of sane men can seriously entertain the opinion that in anything the President has done in the removal of Mr. Stanton he has been guilty of either a high crime or misdemeanor. But "whom the gods wish to destroy they first make mad," and if ever a party was stricken with judicial madness and blindness the action of this party now proves that they are the victims of it.

That the President should be considered guilty of a high crime or misdemeanor for desiring and attempting to bring to the test of judicial decision one of the powers with which he considers that the Constitution has clothed him, and of which power an act of Congress has attempted to divest him, and that, too, in regard to an officer who agrees with him in regard to that constitutional power, seems to me an idea too preposterous to be entertained outside of a lunatic asylum.

The humblest citizen has the undoubted right to try judicially his constitutional rights. In regard to an officer whose office is created by the Constitution it is not only the right but the official duty of the President to bring to the test of judicial decision every power of which Congress endeavors to deprive him and which he believes is vested in him by the Constitution. He can not obey the Constitution nor faithfully fulfill his oath of office without vindicating in a legal, orderly, and judicial mode those powers. A void act of Congress is no excuse before a court or even before the bar of enlightened public opinion for a failure to attempt in a constitutional, legal, and orderly manner to fulfill his constitutional duties. If, therefore, the President is guilty of a crime, that crime consists in his believing that the tenure-of-office bill is unconstitutional or that it does not apply to the case of Mr. Stanton; for if he does so believe it is a duty he can not, without violating his oath, decline to bring to the test of judicial decision whenever the duties of his office require him to remove an officer under his constitutional authority.

Mr. Beck then quoted Madison, Story, and Kent, and cited the attitude of Mr. Stanton himself, at the time the President declined to approve the tenure-of-office act, to show that by the Constitution the right to remove executive officers was vested solely in the President, and that he could not be deprived of this power by an act of Congress.

In opposition to this view it was urged,¹ in the first place, that on the day before this report was made in the House the Senate had solemnly passed on the question of prerogative by agreeing to the following:

Whereas the Senate have read and considered the communication of the President, stating that he had removed Edwin M. Stanton, Secretary of War, and had designated the Adjutant-General of the Army to act as Secretary of War ad interim: Therefore,

Resolved by the Senate of the United States, That under the Constitution and laws of the United States the President has no power to remove the Secretary of War and designate any other officer to perform the duties of that officer ad interim.

Further, it was urged: 2

The Constitution does not make him a judge of the law, but an executor thereof, and he is bound to execute that which the law-making power decrees to be the law of the land. Whatever may be his opinion of the law as a mere individual member of the national family, he is bound to yield it to that higher duty which the Constitution imposes on him as an officer of the state. If his conscience forbid,

¹ Globe, p. 1341.

² By Mr. James F. Wilson, of Iowa, Globe, p. 1387.

he may resign the trust, but he has no right to retain the power of a public officer and subordinate that to the judgment of a mere individual member of the community or nation which has clothed him with executive power for the enforcement of its laws. As an individual he maybe justified in an assumption of the risks attendant upon a disobedience of the law; as a public officer no such plea can be properly entered in his behalf, for he is not only sworn to execute the law, but he also possesses the right of resignation. If his conscience will not permit him to execute a given law, he may resign his trust, and leave to his successor the performance of a duty which his judgment, as an individual, will not surrender to his obligations as a public officer. A willingness to submit to the penalty prescribed for the violation of a law may, to some extent, excuse disobedience on the part of a private citizen, and at the same time avail nothing to the public officer. The latter may at anytime, by resignation, become a private citizen, but the former can not become a public officer in this country except by the suffrages of his fellow citizens. If he accepts the result of their suffrages, he merges his individuality into that official creature which binds itself by an oath as an executive officer to do that which, as a mere individual, he may not believe to be just, right, or constitutional. Such an acceptance removes him from the sphere of the right of private judgment to the plane of the public officer, and binds him to observe the law, his judgment as an individual to the contrary notwithstanding.

The Constitution invests the President with executive power in order that he may "take care that the laws be faithfully executed." Every abuse of this power, whether it be by an improper exercise of it or by neglect or refusal to exercise it at all, is a breach of official duty. But it is not every breach of official duty that can be charged as a crime or misdemeanor against the delinquent officer. Whatever doubt may have arisen in other cases of the criminal character of the official conduct involved in them, the one we are now considering presents no basis on which to rest a doubt. Deliberately, not to say defiantly, the President has violated a penal statute of the United States, and has thereby committed a high misdemeanor which the law says "shall be punished by a fine not exceeding \$10,000, or by imprisonment not exceeding five years, or both said punishments, in the discretion of the court." (Act of March 2, 1847, sec. 6.) All of the circumstances attendant upon this case show that the President's action was deliberate and willful. * * *

Mr. Speaker, it has been urged in this debate that the President's sole object is to secure a judgment of the courts as to the constitutionality of the act regulating the tenure of certain civil offices. Such an intent will not justify the commission of a high crime or misdemeanor. Suppose the courts should hold the act to be constitutional, would the fact that his intent was to have that question decided be a good plea to an indictment for a violation of its provisions? Who is so insane as to assert so preposterous a proposition? Whoever acts in the way and for the purpose suggested does it at his peril. The work belongs to the President in this case, not to the law. This plea in his defense demonstrates that his action was not the result of inadvertence or of mistaken judgment, and that it is the fruit of cool calculation and deliberate purpose. He committed a high misdemeanor in order to secure a judgment of the court.

2412. President Johnson's impeachment, continued.

On the report from the Committee on Reconstruction the House voted the impeachment of President Johnson.

Forms of resolutions directing the carrying of the impeachment of President Johnson to the Senate.

The House authorized a committee of seven to prepare articles impeaching President Johnson, with power to compel testimony.

The impeachment of President Johnson was carried to the Senate by a committee of two.

The Speaker appointed the committee to carry the impeachment of President Johnson to the Senate from those favoring impeachment and from the majority party.

The Speaker appointed the committee to draw articles impeaching President Johnson from those favoring impeachment and from the majority party. After full debate, on February 24,¹ the question was taken on the resolution proposed by the committee, "Will the House agree thereto?" and there appeared yeas 128, nays 47.

So the House determined upon the impeachment of the President.

Immediately thereafter Mr. Thaddeus Stevens proposed the following:

Resolved, That a committee of two be appointed to go to the Senate and at the bar thereof, in the name of the House of Representatives and of all the people of the United States, to impeach Andrew Johnson, President of the United States, of high crimes and misdemeanors in office, and acquaint the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same; and that the committee do demand that the Senate take order for the appearance of the said Andrew Johnson to answer to said impeachment.

2. Resolved, That a committee of seven be appointed to prepare and report articles of impeachment against Andrew Johnson, President of the United States, with power to send for persons, papers, and records, and to take testimony under oath.

After an attempted obstruction had been prevented by the adoption, under suspension of the rules, of an order preventing dilatory motions, the House agreed to the resolutions by a vote of yeas 124, nays 42.²

The Speaker announced as the committee under the first resolution Messrs. Thaddeus Stevens, of Pennsylvania, and John A. Bingham, of Ohio. Both were members of the Committee on Reconstruction and had signed the report, and both belonged to the majority party in the House.

As the committee under the second resolution the Speaker announced Messrs. George S. Boutwell, of Massachusetts, Thaddeus Stevens, of Pennsylvania, John A. Bingham, of Ohio, James F. Wilson, of Iowa, John A. Logan, of Illinois, George W. Julian, of Indiana, and Hamilton Ward, of New York. All of these belonged to the majority party in the House and had voted for the impeachment. The first three were members of the Committee on Reconstruction.

2413. President Johnson's impeachment, continued.

The ceremonies of presenting the impeachment of President Johnson at the bar of the Senate.

A message was sent to inform the Senate that a committee would present the impeachment of President Johnson.

Form of declaration by the chairman of the House committee in presenting the impeachment of President Johnson in the Senate.

The message of the House impeaching President Johnson was referred to a committee of seven Senators appointed by the Chair.

The Senate received the message impeaching President Johnson in its legislative capacity and not as a court.

The committee having impeached President Johnson, returned to the House and reported orally in the usual form.

On February 25,³ in the Senate, the Clerk of the House delivered a message in form as follows:

Mr. President, I have been directed to inform the Senate that the House of Representatives has passed the following resolution:

¹ Journal, p. 392; Globe, p. 1400.

² Journal, pp. 393, 396; Globe, pp. 1400–1402.

³ Senate Journal, p. 217; Globe, p. 1403.

"Resolved, That a committee of two be appointed to go to the Senate and at the bar thereof, in the name of the House of Representatives and of all the people of the United States, to impeach Andrew Johnson, President of the United States, of high crimes and misdemeanors in office, and acquaint the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same; and that the committee do demand that the Senate take order for the appearance of said Andrew Johnson to answer to said impeachment."

And that the House has appointed Mr. Thaddeus Stevens and Mr. John A. Bingham such committee.

Soon thereafter ¹ the Sergeant-at-Arms announced a committee from the House of Representatives, Mr. Thaddeus Stevens and Mr. John A. Bingham, who appeared at the bar of the Senate, when the following occurred:

Mr. Stevens. Mr. President----

The President pro tempore.² The committee from the House of Representatives.

Mr. Stevens. Mr. President, in obedience to the order of the House of Representatives, we appear before you, and in the name of the House of Representatives and of all the people of the United States we do impeach Andrew Johnson, President of the United States, of high crimes and misdemeanors in office; and we further inform the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same; and in their name we demand that the Senate take order for the appearance of the said Andrew Johnson to answer said impeachment.

The President pro tempore. The Senate will take order in the premises.

The committee of the House thereupon withdrew.

Thereupon Mr. Jacob M. Howard, of Michigan, proposed a resolution as follows:

Resolved, That the message of the House of Representatives relating to the impeachment of Andrew Johnson, President of the United States, be referred to a select committee of seven, to consider and report thereon.

Mr. James A. Bayard, of Delaware, objected that the Senate in its legislative capacity might not act on a question of impeachment, and that it should form itself into a court of impeachment before adopting the resolution. In answer to this it was stated that this was a mere preliminary proceeding, and that the procedure followed the precedent of the trial of Judge Peck.

After the resolution had been amended, on the suggestion of Mr. Roscoe Conkling, of New York, and in accordance with the precedent in the trial of Judge Humphreys, by adding after the word "seven" the words "to be appointed by the Chair," the resolution was agreed to.

The President pro tempore thereupon appointed Messrs. Howard, Lyman Trumbull, of Illinois, Roscoe Conkling, of New York, George F. Edmunds, of Vermont, Oliver P. Morton, of Indiana, Stephen C. Pomeroy, of Kansas, and Reverdy Johnson, of Maryland.

On the same day³ the committee from the House, having returned from the Senate, reported orally at the bar of the House through Mr. Stevens, the chairman, as follows:

Mr. Speaker, in obedience to the order of the House, we proceeded to the bar of the Senate, and in the name of this body and of all the people of the United States we impeached, as we were directed to do, Andrew Johnson, President of the United States, of high crimes and misdemeanors in office, and we demanded that the Senate should take order to make him appear before that body to answer for the same,

¹ Journal of Senate, p. 217; Globe, pp. 1405, 1406.

² Benjamin F. Wade, of Ohio, President pro tempore.

³ House Journal, p. 405; Globe, p. 1421.

and announced that the House would soon present articles of impeachment and make them good; to which the response was, "Order shall be taken."

2414. President Johnson's impeachment, continued.

To prevent dilatory tactics the House adopted, under suspension of the rules, a special order for consideration of the articles impeaching President Johnson.

Form of resolution in which the Senate took order for the impeachment of President Johnson.

For the trial of President Johnson the Senate readopted most of the existing rules, with amendments and additions.

On February 25,¹ in the House, Mr. Elihu B. Washburne, of Illinois, offered, under suspension of the rules, the following:

Resolved, That the rules be suspended, and that it is hereby ordered as follows:

"When the committee to prepare articles of impeachment of the President of the United States report the said articles the House shall immediately resolve itself into the Committee of the Whole thereon that speeches in committee shall be limited to fifteen minutes each, which debate shall continue till the next legislative day after the report, to the exclusion of all other business except the reading of the Journal; that at 3 o'clock on the afternoon of said second day the fifteen-minute debate shall cease, and the committee shall then proceed to consider and vote upon amendments that may be offered under the five-minute rule of debate, but no merely pro forma amendment shall be entertained; that at 4 o'clock on the afternoon of said second day the committee shall rise and report their action to the House, which shall immediately and without dilatory motions vote thereon: that if the articles of impeachment are agreed on the House shall then immediately and without dilatory motions elect by ballot seven managers to conduct said impeachment on the part of the House; and that during the pendency of resolutions in the House relative to said impeachment thereafter no dilatory motions shall be received except one motion on each day that the House do now adjourn."

This resolution, which was intended to prevent obstructive action on the part of the minority, was agreed to, yeas 106, nays 37.

On the same day² by a vote of yeas 105, nays 36, the House agreed to the following, on motion of Mr. George S. Boutwell, of Massachusetts:

Resolved, That the committee appointed to prepare and report articles of impeachment against, Andrew Johnson, President of the United States, have leave to sit during the sessions of the House. Resolved further, That the Committee on Reconstruction be authorized to sit during the sessions of the House.

On February 26,³ in the Senate, Mr. Howard, from the select committee, reported the following resolution; which was agreed to, and of which the House was duly notified:

Whereas the House of Representatives, on the 25th day of the present month, by two of their members, Messrs. Thaddeus Stevens and John A. Bingham, at the bar of the Senate, impeached Andrew Johnson, President of the United States, of high crimes and misdemeanors in office, and informed the Senate that the House of Representatives will in due time exhibit particular articles of impeachment against him and make good the same, and likewise demanded that the Senate take order for the appearance of said Andrew Johnson to answer to the said impeachment: Therefore,

Resolved, That the Senate will take proper order thereon, of which due notice shall be given to the House of Representatives.

¹ Journal, pp. 407, 408; Globe, pp. 1425, 1426.

² Journal, p. 410; Globe, p. 1427.

³ Senate Journal, p. 222; House Journal, p. 418; Globe, pp. 1431, 1453.

On February 28,¹ in the Senate, Mr. Howard, from the select committee, presented a report "prescribing certain rules of proceeding for the Senate when sitting as a high court of impeachment." The rules comprised the rules of the Chase trial, with some modifications in minor details, and also several new rules. The Senate considered the report on February 29 and March 2,² and after amending the rules agreed to them.

2415. President Johnson's impeachment, continued.

The articles impeaching President Johnson were considered in Committee of the Whole.

At the time of President Johnson's impeachment it was agreed that he should be described as President and not as Acting President.

On February 29,³ in the House, Mr. George S. Boutwell, of Massachusetts, from the committee appointed to prepare articles of impeachment, submitted their report, which was at once considered in Committee of the Whole in accordance with the special order. At the outset Mr. Boutwell said: ⁴

In considering and preparing these articles the committee met with a difficulty in the outset which it becomes me to present to the Committee of the Whole House in the beginning of this discussion. That difficulty is this: What should be the description, so far as the office is concerned, in which Andrew Johnson should be arraigned for these misdemeanors; whether as President of the United States or as Vice President of the United States upon whom the powers and duties of the office of President had devolved.

After such consideration as the committee were able to give to this matter during the period of time assigned to the consideration of this subject they are, I believe I may say, unanimously of opinion that the manner of description used in the articles we have reported is that manner of description on which we shall be compelled to rely. Without undertaking at this moment to advise the House finally as to what they ought to do upon this branch of the subject, I will venture to suggest this consideration, derived from the Constitution: That it is only when the President is on trial before the Senate that the Chief Justice of the Supreme Court of the United States is to preside. Therefore it follows that a different court must be organized for the trial of the Vice-President from that authorized by the Constitution to try the President.

Later, on March 2,5 Mr. John A. Bingham, of Ohio, said:

I desire to say, Mr. Chairman, to the House this question was considered by the committee, and I was not aware when the report was made there was a member of that committee who entertained the slightest doubt on the subject that Andrew Johnson is President of the United States. I desire to say that he must be impeached, if he be impeached at all, either distinctively as President of the United States or as Vice-President of the United States. I desire to say, further, that in both capacities he can not be impeached at the same time and on the same trial, for the reason that the court, as was well said by the chairman of the committee, is differently constituted by the terms of the Constitution to try the President of the United States. The Chief Justice of the United States must, by the terms of the Constitution, preside if the President be tried; the Chief Justice shall not preside if the Vice-President be tried.

Again, Andrew Johnson is estopped by record in five hundred instances from denying that he is President of the United States. The Senate of the United States is estopped; the House of Representatives is estopped. Your Constitution declares that no bill shall be a law until it be presented to the President for his approval or disapproval. If he be not President, if the people have no President, then you can pass no law. If he be President, then let him be called President on your record.

¹ Senate Journal, pp. 230, 231; Globe, pp. 1486, 1515; Senate Report No. 59.

² Senate Journal, pp. 236–252; Globe, pp. 1515–1535, 1568–1603.

³ House Journal, pp. 433, 437; Globe, pp. 1542-1559.

⁴Globe, p. 1544.

 $^{^5\,\}mathrm{Globe},$ p. 1615.

Mr. Luke P. Poland, of Vermont, said:

We have had some Congressional history to which I call the attention of the House. In all that has been said upon the subject I have heard no allusion to the settlement of this question in Congress. The first instance of the accession of Vice-President to the office of President was that of John Tyler on the death of President Harrison, in 1841. Before the first message of Mr. Tyler was sent in at the special session, as it was called, in 1841 the following proceedings took place in the House:

"Mr. Wise offered the usual resolution for the appointment of a committee on the part of the House to join such committee as might be appointed by the Senate to wait on the President of the United States and inform him that a quorum of the two Houses had assembled, and that Congress was ready to proceed to business.

"Mr. McKeon moved to amend the resolution by striking out the word 'President' and inserting the words 'Vice President, now exercising the office of President.'"

After considerable debate the vote was taken in the House, and the amendment was rejected. The veas and nays do not seem to have been taken.

When the message was sent to the Senate the same question was raised there. A similar amendment was offered to a similar resolution. There was more debate than in the House, participated in by Mr. Huntington, Mr. Allen, Mr. Tappan, Mr. Walker, and Mr. Calhoun. The yeas and nays were taken on this amendment in the Senate, and were as follows:

"Yeas—Messrs. Allen, Benton, Henderson, Linn, McRoberts, Tappan, Williams, and Wright—8.

"Nays—Messrs. Archer, Barrow, Bates, Bayard, Berrien, Buchanan, Calhoun, Choate, Clay of Kentucky, Clayton, Dixon, Evans, Fulton, Graham, Huntington, Kerr, King, Mangum, Merrick, Miller, Moorehead, Nicholson, Pierce, Porter, Prentiss, Preston, Rives, Sevier, Simmons, Smith of Indiana, Southard, Sturgeon, Tallmadge, Walker, White, Woodbridge, Woodbury, and Young—38."

So that the question seems to have been settled by a vote of both Houses at that time, and during the whole administration, nearly four years of President Tyler and three years of President Fillmore, and now almost three years of President Johnson, this question has been regarded as settled by the decision of Congress in 1841.

As appears in the articles of impeachment, this reasoning was conclusive.

2416. President Johnson's impeachment, continued.

As reported from the committee, the articles impeaching President Johnson were confined to a few acts chiefly concerning Secretary Stanton.

Although the charges in the articles impeaching President Johnson were at first narrowed to a few charges, there was a protest against the theory that only an indictable offense was impeachable.

A statement as to the sentiments of the House on the nature of the power of impeachment during the first and second attempts to impeach President Johnson.

In the case of the Johnson impeachment, the question "Will the House agree thereto?" was put as to each article after they had been open to amendment.

The first or headline paragraph and the last or reservation clause were agreed to after the articles impeaching the President had been agreed to.

Mr. Boutwell stated that in the articles as reported the committee had confined themselves to the matters brought forward in the present proceedings, and had not gone into that broad field of general charges on which the first attempt at impeachment had failed. In the course of the debate, however, Mr. William Lawrence, of

Ohio, argued again that the President might be impeached for other than indictable offenses, and said in the course of his remarks:¹

I have taken some pains to ascertain the opinions of members of this House, and I think there are but few, even among those who voted against the impeachment of the President in December last, who entertain the idea or now hold that he must be guilty of an offense indictable either by the common or statute law to render him liable to impeachment. Such a doctrine is at variance with the whole theory and practice in cases of impeachment.

On March 22the articles were discussed at length, amended somewhat, and agreed to. In the Committee of the Whole a committee amendment in the nature of a substitute was agreed to. When the articles were reported to the House this substitute was agreed to, and then, on each article, beginning with Article 1, the question was put: "Will the House agree thereto?" And on the nine articles the result was:

Article 1	ays.
Article 3	42
	41
Article 4	40
	40
Article 5	42
Article 6	42
Article 7	42
Article 8 127	42
Article 9	41

Then, by unanimous consent, the first and last paragraphs were agreed to, as $follows:^3$

Articles exhibited by the House of Representatives of the United States, in the name of themselves and all the people of the United States, against Andrew Johnson, President of the United States, in maintenance and support of their impeachment against him for high crimes and misdemeanors in office.

* * * * * * * *

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles or other accusation or impeachment against the said Andrew Johnson, President of the United States, and also of replying to his answers which he shall make unto the articles herein preferred against him, and of offering proof to the same and every put thereof, and all and every other article, accusation, or impeachment which shall be exhibited by them, as the case shall require, do demand that the said Andrew Johnson may be put to answer the high crimes and misdemeanors in office herein charged against him, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

2417. President Johnson's impeachment, continued.

The managers of the Johnson impeachment were chosen by ballot.

The Speaker appointed four tellers to count the ballots for managers of the Johnson impeachment.

¹Globe. pp. 1549, 1550.

² House Journal, pp. 439-450; Globe. pp. 1603-1618.

³ House Journal, p. 450; Globe, p. 1618.

Mr. Speaker Colfax tendered to several members of the minority a place as one of the tellers to count the ballots for managers of the Johnson impeachment.

Members of the minority declining to serve as tellers to count the ballots for managers of the Johnson impeachment, the Speaker appointed all from the majority party.

In the balloting for managers of the Johnson impeachment nominations were made before the vote.

Mr. Speaker Colfax held that when managers of an impeachment were elected by ballot the managers, and not the House, chose the chairman.

Usage of the House in the selection of chairman of the managers of an impeachment. (Footnote.)

The House excused one Member from voting on the ballot for managers of the Johnson impeachment, but refused to excuse others.

It appears that the minority party generally refrained from participating in the ballot for managers of the Johnson impeachment.

Forms of resolutions providing for carrying to the Senate the articles impeaching President Johnson and notifying the Senate thereof.

Then, under the order, the House proceeded to choose, by ballot, seven managers to conduct the impeachment.

The Speaker appointed as tellers Messrs. Luke P. Poland, of Vermont; Rufus P. Spalding, of Ohio; Thomas A. Jenckes, of Rhode Island, and Samuel S. Marshall, of Illinois. All of these but Mr. Marshall were of the number voting for the articles of impeachment. Mr. Marshall, at his request, was excused, and Mr. Samuel J. Randall, of Pennsylvania, was appointed, but he asked to be excused, on the ground that he did not wish in any way to participate in the proceedings. Mr. William E. Niblack, of Indiana, further said that the minority party did not intend to vote for managers.

The Speaker,² understanding that the minority did not wish to be represented, appointed Mr. Austin Blair, of Michigan, as fourth teller.

Mr. Luke P. Poland, of Vermont, nominated the following for managers:

Thaddeus Stevens, of Pennsylvania; Benjamin F. Butler, of Massachusetts; John A. Bingham, of Ohio; George S. Boutwell, of Massachusetts; James F. Wilson, of Iowa; Thomas Williams, of Pennsylvania; John A. Logan, of Illinois.

Mr. John A. Peters, of Maine, rising to a parliamentary inquiry, asked if the order in which the names were presented would determine who should be chairman.

The Speaker said:

The Chair cannot answer that question. It is a matter that does not affect the House of Representatives. The managers are to present themselves at the bar of the Senate. They can settle that matter among themselves.

Mr. Halbert E. Paine, of Wisconsin, then asked:

Suppose members should designate on their ballots their choice for chairman, would the gentleman having the greatest number of votes as such be the chairman?

¹ House Journal, pp. 450, 451; Globe, pp. 1618, 1619.

² Schuyler Colfax, of Indiana, Speaker.

The Speaker said:

The Chair would not declare any such result, because it is not in accordance with the usage for the House to select a chairman. In the case of the impeachment of Judge Chase, in which Mr. John Randolph was the leading manager, the House did not select him as such; he was simply selected by the managers themselves, they deeming it proper to have him act as their spokesman.¹

Mr. Michael C. Kerr, of Indiana, on his request, was excused from voting. Then, a proposition to excuse all who wished to be excused was objected to, the Chair declining to entertain it except by unanimous consent.

Thereupon, Mr. Samuel J. Randall, of Pennsylvania, said:

The members on this side do not wish to vote, as they are in favor of no part of this proceeding, and I know of no way by which they can be forced to vote. Therefore there is no necessity for excusing them.

The ballot resulted as follows:

Whole number of votes, 118; necessary to a choice, 60; of which-

John A. Bingham received	114	G. W. Scofield	3
George S. Boutwell	113	Luke P. Poland	3
James F. Wilson	112	G. S. Orth	2
Benjamin F. Butler	108	John A. Peters	1
Thomas Williams	107	Austin Blair	1
John A. Logan	106	J. C. Churchill	1
Thaddeus Stevens	105	J. F. Benjamin	I
Thomas A. Jenckes	22	C. Upson	1

The Speaker thereupon announced the names of the seven elected.

Then, on motion of Mr. Boutwell, the following resolutions were agreed to:

Resolved, That a message be sent to the Senate to inform them that this House have appointed managers to conduct the impeachment against the President of the United States, and have directed the said managers to carry to the Senate the articles agreed upon by this House, to be exhibited in maintenance of their impeachment against said Andrew Johnson, and that the Clerk of the House do go with said message.

Resolved, That the articles agreed to by this House, to be exhibited in the name of themselves and of all the people of the United States, against Andrew Johnson, President of the United States, in maintenance of their impeachment against him of high crimes and misdemeanors in office, be carried to the Senate by the managers appointed to conduct said impeachment.

2418. President Johnson's impeachment, continued.

It was held in the Johnson impeachment that the managers or any Member of the House might propose an additional article as a question of privilege.

After the House had agreed to articles impeaching President Johnson the managers reported two additional articles, which were also agreed to.

On the tenth and eleventh articles in the Johnson impeachment the House, after debate, concluded to impeach for other than indictable offenses.

On March 3,2 in the House, Mr. Benjamin F. Butler, of Massachusetts, from the managers and by their instruction, reported an additional article of impeach-

¹In the trial of Judge Humphreys, where the managers were appointed by the Speaker, the first named acted as chairman. In the Belknap trial the managers were chosen by resolution, and the principle was recognized that the first named should be chairman.

² House Journal, pp. 461-464; Globe, pp. 1638-1642.

ment. This article Mr. Butler had previously offered as an amendment, but it had been rejected in Committee of the Whole by a vote of ayes 45, noes 56, on a statement of Mr. James F. Wilson, of Iowa, that the committee appointed to frame articles had already considered it and determined against it. The article proposed (which subsequently became Article X of the articles as presented in the Senate) charged the President with bringing his office into contempt by his utterances.

Mr. William S. Holman, of Indiana, made the point of order that this was an amendment to a proposition not before the House.

The Speaker 2 said:

The Chair rules, as he has ruled in all such cases, that this is a privileged question. And the Chair will also refer to the following paragraph of the original report adopted by the House yesterday:

"And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles or other accusation or impeachment against the said Andrew Johnson," etc.

Mr. Charles A. Eldridge, of Wisconsin, made the further point of order that the managers might not report additional articles. Their functions were different from those of the committee appointed to prepare articles

The Speaker ruled:

The Chair overrules the point of order on two grounds. In the first place, the usage of the House has been, in all cases of impeachment, that the replication made by the person accused should be referred to the managers, to which the managers prepare a reply and submit it to the House before it is sent to the Senate. This follows precisely the language of the report adopted by the House on yesterday. * * The second ground is this: That any Member of the House of Representatives, whether one of the board of managers or not, can, as a question of privilege, propose additional articles of impeachment. The Chair makes his ruling so broad in order to cover the entire case. Such article of impeachment may come with more formality from the board of managers, or from a committee specially appointed for the purpose. But the Member from Wisconsin [Mr. Eldridge], if he sees proper to do so, or any other Member, can propose articles of impeachment against any officer of the Government.

Mr. Butler explained the purpose of the article, saying that it followed the precedent of the eighth article of those preferred against Judge Chase, which received more votes in favor of conviction than any other.

Mr. Frederick E. Woodbridge, of Vermont, who had joined with Mr. James F. Wilson, of Iowa, in arguing that impeachment might be had only for indictable offenses, and whose views had been followed by the House in the first attempt at impeachment, now said: ³

I wish simply to say now, in order that the gentleman from Massachusetts [Mr. Butler] may answer the objection, that I am opposed to this article for two reasons. The first is that if the President of the United States is put on his trial under this specification it will take a long time, almost equal, perhaps if the counsel desire it, to the Warren Hastings trial, which, I believe, was about seven years. For that, if for no other reason, I should be opposed to this article.

The other reason is that there is no offense charged under which a conviction can be had: The article concludes as follows:

"Which said utterances, declarations, threats, and harangues, highly censurable in any, and peculiarly indecent and unbecoming in the Chief Magistrate of the United States, by means whereof said Andrew Johnson has brought the high office of the President of the United States into contempt, ridicule, and disgrace, to the great scandal of all good citizens, whereby said Andrew Johnson, President of the United States, did commit, and was then and there guilty of, a high misdemeanor in office."

¹Globe, pp. 1615, 1616.

² Schuyler Colfax, of Indiana, Speaker. Globe, p. 1638.

³ Globe, pp. 1640, 1641.

Now, sir, there axe under the Constitution but two offenses under which a conviction can be had, namely: High crimes and misdemeanors. Neither of these is charged in this article. It is not a crime or misdemeanor in the President to bring himself into public obloquy before the people by reason of his improper speech. It is not a crime for him to make remarks when "swinging round the circle" or elsewhere, that may be distasteful to the Congress of the United States or that may be very improper. I have yet to learn that the President of the United States, or any civil officer, can be impeached, except for a high crime or misdemeanor. The gentleman will not pretend that he has set forth either in this article. He only states that the President had brought himself into public disgrace by reason of public speeches which he made before the country. Now, all I ask of my friend is that he will so frame his article that at least the Senate, sitting as a high court of impeachment, may entertain it as being properly charged.

To this Mr. Butler replied:

What is the proposition of those gentlemen who insist that the President can be impeached for those acts only which are indictable as crimes under some statute? * * * Now, what is this proposition? The proposition is this, that for the lowest degree of indictable crime, to wit: An assault and battery, or, as a friend suggests, selling liquor without license, the President of the United States may be impeached, but he can not be impeached when he usurps the liberties of the people, because there is no indictment under any statute against that. He may be impeached for selling liquor without a license, but he can not be impeached if he gets into an open barouche with two abandoned women, one on each side of him, roaring drunk, and rides up and down Pennsylvania avenue, because there is no statute that I know of against that. He can not be impeached for any violation of public decency which does not happen to be an indictable crime. He can not be impeached for debasing his high office. The statement of this proposition is its best refutation. Here let me say to my friend from Vermont that I have not charged in this article that the President has brought himself into ridicule and contempt. If he had only done that I should have been quite willing to let him go unpunished [laughter], but I do say that he brought the high office which he fills-no, which he occupies into sovereign disgrace, ridicule, and contempt, so that it is hardly respectable for a decent man to fill hereafter; and is not that an impeachable misdemeanor? I do not stand upon this point on the weight of authority of my own words alone. I stand upon the authority of one of the best lawyers that ever sat upon the bench, Judge Story, of the Supreme Court of the United States, who uses these words to define what is impeachable:

"It is a proceeding, probably the fairest that could be devised, by which the people, through the action of that branch of the Government which most directly and fully represents themselves, call in question the fitness of their public officers, and dismiss them if unfit." (Story on the Constitution, see. 810.)

Now, is there any one in this House, or outside of this House anywhere in the country, who would vote that Andrew Johnson is a "fit" man to be President of the United States? Who will say "ay" to that anywhere? This article has been drawn exactly within the precedent of Judge Chase's case. Of all the great lawyers who defended Judge Chase—and he had one, Mr. Wirt, who argued two days in succession for him—no one ventured to say to the Senate that that article, if proved, was not a misdemeanor within the provisions of the Constitution.

Mr. James F. Wilson, of Iowa, stated that he was the only one of the managers who opposed the article. He did so because he believed the offense not impeachable and because the article would prolong the trial.

The question being taken on the article, it was agreed to, yeas 87, nays 43. Both Messrs. Woodbridge and Wilson voted against it.

Mr. Bingham, by the unanimous instruction of the managers, presented another article, which was agreed to, yeas 108, nays 82,¹ and which became Axticle XI.

2419. President Johnson's impeachment, continued.

The House gave to the managers appointed for the Johnson trial the power to send for persons and papers.

¹ House Journal, pp. 464, 465; Globe, p. 1642.

The articles of impeachment of President Johnson having been amended, the House gave a new direction for carrying them to the Senate.

The message from the House announcing that articles of impeachment would be presented against President Johnson contained the names of the managers.

The Senate having informed the House of its readiness to receive the managers with the articles impeaching President Johnson, the House as Committee of the Whole attended its managers to the Senate.

Then Mr. Bingham offered the following resolutions:

Resolved, That the articles agreed to by the House this day, together with those adopted by the House on yesterday, to be exhibited in the name of the House of Representatives and of all the people of the United States against Andrew Johnson, President of the United States, in maintenance of their impeachment against him for high crimes and misdemeanors in office, be carried to the Senate by the managers appointed to conduct said impeachment.

Resolved, That the managers on the part of the House, in the matter of the impeachment of the President, be, and hereby are, authorized to appoint a clerk and a messenger, to be paid for their services at the usual rates during the time that they are employed, and that the managers have power to send for persons and papers.

Mr. James Brooks, of New York, questioned the propriety of giving to the managers the power to send for persons and papers; but the resolutions were agreed to by the House, yeas 96, nays 27.1

On March 3,² in the Senate, the following message was received from the House by its Clerk:

Mr. President, I am directed to inform the Senate that the House of Representatives has appointed Mr. John A. Bingham, of Ohio; Mr. George S. Boutwell, of Massachusetts; Mr. James F. Wilson, of Iowa; Mr. B. F. Butler, of Massachusetts; Mr. J. A. Logan, of Illinois; Mr. Thom Williams, of Pennsylvania, and Mr. Thaddeus Stevens, of Pennsylvania, managers to conduct the impeachment against Andrew Johnson, President of the United States, and has directed the said managers to carry to the Senate the articles of impeachment agreed upon by the House, to be exhibited in maintenance of their impeachment against the said Andrew Johnson.

Thereupon Mr. Jacob M. Howard, of Michigan, offered the following, which was agreed to:

Ordered, That the Secretary of the Senate inform the House of Representatives that the Senate is ready to receive the managers appointed by the House of Representatives to carry to the Senate articles of impeachment against Andrew Johnson, President of the United States.

On March 4,³ in the House, Mr. Bingham presented this resolution, which was agreed to:

Resolved, That the House resolve itself into the Committee of the Whole and attend the managers appointed by the House to the Senate to present, by its managers, the articles of impeachment exhibited by the House against Andrew Johnson, President of the United States.

Thereupon the Speaker said:

In the absence of the senior Member of the House, Mr. Washburne, of Illinois, the gentleman from Massachusetts, Mr. Dawes, will please take the chair in Committee of the Whole. The Committee of the Whole, preceded by its chairman, who will be supported by the Clerk and Doorkeeper, will follow the managers to the Senate Chamber.

¹ House Journal, p. 466; Globe, pp. 1642, 1643.

² Senate Journal, pp. 254, 255; Globe, p. 1622.

³ House Journal, p. 470; Globe, p. 1661.

Accordingly, at 1 o'clock p.m., the House, as in the Committee of the Whole preceded by its chairman, Mr. Dawes, who was supported by the Clerk and Doorkeeper of the House, followed the managers of the House to the Senate Chamber.

2420. President Johnson's impeachment continued.

The ceremonies of presenting the articles impeaching President Johnson at the bar of the Senate.

At the presentation of the articles impeaching President Johnson the Speaker was, by order of the Senate, escorted to a seat beside the President pro tempore.

Form of declaration of the chairman of the managers of their readiness to present to the Senate the articles impeaching President Johnson.

The articles impeaching President Johnson.

The articles impeaching President Johnson were read by the chairman of the managers and delivered at the table of the Secretary.

The articles impeaching President Johnson were signed by the Speaker and attested by the Clerk.

The report to the House of the presentation of articles impeaching President Johnson was made by the chairman of the Committee of the Whole.

Mr. Speaker Colfax held that the managers of an impeachment were not a committee. (Footnote.)

The articles impeaching President Johnson were received by the Senate with the President pro tempore presiding.

In the Senate Chamber, when the managers 2 appeared at the bar, their presence was announced by the Sergeant-at-Arms of the Senate.

The President pro tempore 3 (for the Senate had not yet organized for the trial) said:

The managers of the impeachment will advance within the bar and take the seats provided for them.

The managers did this.

Thereupon, at the suggestion of Mr. Thomas A. Hendricks, of Indiana, a Senator, a seat was provided for the Speaker of the House by the side of the President of the Senate, and the Speaker was escorted by Mr. James W. Grimes, of Iowa, a Senator, to a seat at the right of the President pro tempore.

Mr. Manager Bingham then said:

Mr. President, the managers of the House of Representatives, by order of the House, are ready at the bar of the Senate, whenever it may please the Senate to hear them, to present articles of impeachment and in maintenance of the impeachment preferred against Andrew Johnson, President of the United States, by the House of Representatives.

The President pro tempore said:

The Sergeant-at-Arms will make proclamation.

¹Senate Journal, pp. 260–268; Globe, pp. 1647–1649.

² The managers are not a committee. Mr. Speaker Colfax said: "The managers have been called a board of managers. Their official title is simply managers. They are not a committee." Globe, p. 1660.

³ Benjamin F. Wade, of Ohio, President pro tempore.

The Sergeant-at-Arms proclaimed:

Hear ye, hear ye, hear ye. All persons are commanded to keep silence, on pain of imprisonment, while the House of Representatives is exhibiting to the Senate of the United States articles of impeachment against Andrew Johnson, President of the United States.

The managers then rose and remained standing, with the exception of Air. Stevens, who was physically unable to do so, while Mr. Manager Bingham read the articles of impeachment, as follows:

Articles exhibited by the House of Representatives of the United States, in the name of themselves and all the people of the United States, against Andrew Johnson, President of the United States, in maintenance and support of their impeachment against him for high crimes and misdemeanors in office

ARTICLE I.

That said Andrew Johnson, President of the United States, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, unmindful of the high duties of his office, of his oath of office, and of the requirement of the Constitution that be should take care that the laws be faithfully executed, did unlawfully, and in violation of the Constitution and laws of the United States, issue an order in writing for the removal of Edwin M. Stanton from the office of Secretary for the Department of Wax, said Edwin M. Stanton having been theretofore duly appointed and commissioned by and with the advice and consent of the Senate of the United States, as such Secretary, and said Andrew Johnson, President of the United States, on the 12th day of August, in the year of our Lord 1867, and during the recess of said Senate, having suspended by his order Edwin M. Stanton from said office, and within twenty days after the first day of the next meeting of said Senate-that is to say, on the 12th day of December, in the year last aforesaid-having reported to said Senate such suspension, with the evidence and reasons for his action in the case and the name of the person designated to perform the duties of such office temporarily until the next meeting of the Senate, and said Senate thereafterwards, on the 13th day of January, in the year of our Lord 1868, having duly considered the evidence and reasons reported by said Andrew Johnson for said suspension, and having refused to concur in said suspension, whereby and by force of the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, said Edwin M. Stanton did forthwith resume the functions of his office, whereof the said Andrew Johnson had then and there due notice, and said Edwin M. Stanton, by reason of the premises, on said 21st day of February, being lawfully entitled to hold said office of Secretary for the Department of War, which said order for the removal of said Edwin M. Stanton is, in substance, as follows, that is to say:

"EXECUTIVE MANSION,

"Washington, D.C., February 21, 1868.

"SIR: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States you are hereby removed from office as Secretary for the Department of Wax, and vour functions as such will terminate upon receipt of this communication.

"You Will transfer to Brevet Maj. Gen. Lorenzo Thomas, Adjutant-General of the Army, who has this day been authorized and empowered to act as Secretary of Wax ad interim, all records, books, papers, and other public property now in your custody and charge.

"Respectfully, yours,

ANDREW JOHNSON

"HON. EDWIN M. STANTON, Washington, D.C."

Which order was unlawfully issued with intent then and there to violate the act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867; and with the further intent, contrary to the provisions of said act, in violation thereof, and contrary to the provisions of the Constitution of the United States, and without the advice and consent of the Senate of the United States, the said Senate then and there being in session, to remove said Edwin M. Stanton from the office of Secretary for the Department of Wax, the said Edwin M. Stanton being then and there Secretary of Wax, and being then and there in the due and lawful execution and discharge of the duties of said office, whereby said Andrew Johnson, President of the United States, did then and there commit, and was guilty of a high misdemeanor in office.

ARTICLE II.

That on said 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, said Andrew Johnson, President of the United States, unmindful of the high duties of his office, of his oath of office, and in violation of the Constitution of the United States, and contrary to the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, without the advice and consent of the Senate of the United States, said Senate then and there being in session, and without authority of law, did, with intent to violate the Constitution of the United States and the act aforesaid, issue and deliver to one Lorenzo Thomas a letter of authority, in substance as follows, that is to say:

"EXECUTIVE MANSION,

"Washington, D.C., February 21, 1868.

"SIR: Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War ad interim, and will immediately enter upon the discharge of the duties pertaining to that office.

"Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

"Respectfully, yours,

Andrew Johnson.

"To Brevet Maj. Gen. LORENZO THOMAS,

"Adjutant-General United States Army, Washington, D.C."

Then and there being no vacancy in said office of Secretary for the Department of War, whereby said Andrew Johnson, President of the United States, did then and there commit, and was, guilty of a high misdemeanor in office.

ARTICLE III.

That said Andrew Johnson, President of the United States, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, did commit and was guilty of a high misdemeanor in office in this, that, without authority of law, while the Senate of the United States was then and there in session, he did appoint one Lorenzo Thomas to be Secretary for the Department of War ad interim, without the advice and consent of the Senate and with intent to violate the Constitution of the United States, no vacancy having happened in said office of Secretary for the Department of War during the recess of the Senate, and no vacancy existing in said office at the time, and which said appointment, so made by said Andrew Johnson, of said Lorenzo Thomas' is in substance as follows, that is to say:

"EXECUTIVE MANSION,

"Washington, D.C., February 21, 1868.

"SIR: Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War ad interim, and will immediately enter upon the discharge of the duties pertaining to that office.

"Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

"Respectfully, yours,

Andrew Johnson.

"To Brevet Maj. Gen. LORENZO THOMAS,

"Adjutant-General United States Army, Washington, D.C."

ARTICLE IV.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, in violation of the Constitution and laws of the United States, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, with intent, by intimidation and threats, unlawfully to hinder and prevent Edwin M. Stanton, then and there the Secretary for the Department of War, duly appointed under the laws of the United States, from holding said office of Secretary for the Department of War, contrary to and in violation of the Constitution of the United States and of the provisions of an act entitled "An act to define and punish certain conspiracies," approved July 31, 1861, whereby said Andrew Johnson, President of the United States, did then and there commit, and was guilty of a high crime in office.

ARTICLE V.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the 21st day of February, in the year of our Lord 1868, and on divers other days and times in said year, before the 2d day of March, A. D. 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, to prevent and hinder the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, and in pursuance of said conspiracy did unlawfully attempt to prevent Edwin M. Stanton, then and there being Secretary for the Department of War, duly appointed and commissioned under the laws of the United States, from holding said office, whereby the said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ARTICLE VI

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas, by force to seize, take, and possess the property of the United States in the Department of War, and then and there in the custody and charge of Edwin M. Stanton, Secretary for said Department, contrary to the provisions of an act entitled "An act to define and punish certain conspiracies," approved July 31, 1861, and with intent to violate and disregard an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, whereby said Andrew Johnson, President of the United States, did then and there commit a high crime in office.

ARTICLE VII.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully conspire with one Lorenzo Thomas with intent unlawfully to seize, take, and possess the property of the United States in the Department of War, in the custody and charge of Edwin M. Stanton, Secretary for said Department, with intent to violate and disregard the act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, whereby said Andrew Johnson, President of the United States, did then and there commit a high misdemeanor in office.

ARTICLE VIII.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, with intent unlawfully to control the disbursements of the moneys appropriated for the military service and for the Department of War, on the 21st day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, did unlawfully and contrary to the provisions of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, and in violation of the Constitution of the United States, and without the advice and consent of the Senate of the United States, and while the Senate was then and there in session, there being no vacancy in the office of Secretary for the Department of War, with intent to violate and disregard the act aforesaid, then and there issue and deliver to one Lorenzo Thomas a letter of authority in writing, in substance as follows, that is to say:

"EXECUTIVE MANSION.

"Washington, D.C., February 21, 1868.

"SIR: Hon. Edwin M. Stanton having been this day removed from office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War ad interim, and will immediately enter upon the discharge of the duties pertaining to that office.

"Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

"Respectfully, yours,

Andrew Johnson.

"Brevet Maj. Gen. LORENZO THOMAS,

"Adjutant-General United States Army, Washington, D.C.

whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ARTICLE IX.

That said Andrew Johnson, President of the United States, on the 22d day of February, in the year of our Lord 1868, at Washington, in the District of Columbia, in disregard of the Constitution and the laws of the United States, duly enacted, as Commander in Chief of the Army of the United States, did bring before himself then and there William H. Emory, a major-general by brevet in the Army of the United States, actually in command of the Department of Washington and the military forces thereof, and did then and there, as such Commander in Chief, declare to and instruct said Emory that part of a law of the United States, passed March 2, 1867, entitled "An act making appropriations for the support of the Army for the year ending June 30, 1868, and for other purposes," especially the second section thereof, which provides, among other things, that "all orders and instructions relating to military operations issued by the President or Secretary of War shall be issued through the General of the Army, and, in case of his inability, through the next in rank," was unconstitutional and in contravention of the commission of said Emory, and which said provision of law had been theretofore duly and legally promulgated by general order for the government and direction of the Army of the United States, as the said Andrew Johnson then and there well knew, with intent thereby to induce said Emory, in his official capacity as commander of the Department of Washington, to violate the provisions of said act, and to take and receive, act upon, and obey such orders as he, the said Andrew Johnson, might make and give, and which should not be issued through the General of the Army of the United States, according to the provisions of said act, and with the further intent thereby to enable him, the said Andrew Johnson, to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed. March 2, 1867, and to unlawfully prevent Edwin M. Stanton, then being Secretary for the Department of War, from holding said office and discharging the duties thereof, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office.

ARTICLE X.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and the dignity and proprieties thereof, and of the harmony and courtesies which ought to exist and be maintained between the executive and legislative branches of the Government of the United States, designing and intending to set aside the rightful authority and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt, and reproach the Congress of the United States and the several branches thereof, to impair and destroy the regard and respect of all the good people of the United States for the Congress and legislative power thereof (which all officers of the Government ought inviolably to preserve and maintain), and to excite the odium and resentment of all the good people of the United States against Congress and the laws by it duly and constitutionally enacted; and in pursuance of his said design and intent, openly and publicly, and before divers assemblages of the citizens of the United States convened in divers parts thereof to meet and receive said Andrew Johnson as the Chief Magistrate of the United States, did, on the 18th day of August, in the year of our Lord 1866, and on divers other days and times, as well before as afterwards, make and deliver with a loud voice certain intemperate, inflammatory, and scandalous harangues, and did therein utter loud threats and bitter menaces as well against Congress as the laws of the United States duly enacted thereby, amid the cries, jeers, and laughter of the multitudes then assembled and within hearing, which are set forth in the several specifications hereinafter written, in substance and effect, that is to say:

Specification first.—In this, that at Washington, in the District of Columbia, in the Executive Mansion, to a committe of citizens who called upon the President of the United States, speaking of and concerning the Congress of the United States, said Andrew Johnson, President of the United States, heretofore, to wit, on the 18th day of August, in the year of our Lord 1866, did, in a loud voice, declare in substance and effect, among other things, that is to say:

"So far as the executive department of the Government is concerned, the effort has been made to restore the Union, to heal the breach, to pour oil into the wounds which were consequent upon the struggle, and (to speak in common phrase) to prepare, as the learned and wise physician would, a plaster healing in character and coextensive with the wound. We thought, and we think, that we had partially succeeded; but as the work progresses, as reconstruction seemed to be taking place and the country was becoming reunited, we found a disturbing and marring element opposing us. In alluding to that element, I shall go no further than your convention and the distinguished gentleman who has delivered

to me the report of its proceedings. I shall make no reference to it that I do not believe the time and the occasion justify.

"We have witnessed in one department of the Government every endeavor to prevent the restoration of peace, harmony, and union. We have seen hanging upon the verge of the Government, as it were, a body called, or which assumes to be, the Congress of the United States, while in fact it is a Congress of only a part of the States. We have seen this Congress pretend to be for the Union when its every step and act tended to perpetuate disunion and make a disruption of the States inevitable. * * * We have seen Congress gradually encroach step by step upon constitutional rights and violate, day after day and month after month, fundamental principles of the Government. We have seen a Congress that seemed to forget that there was a limit to the sphere and scope of legislation. We have seen a Congress in a minority assume to exercise power which, allowed to be consummated, would result in despotism or monarchy itself."

Specification second.—In this, that at Cleveland, in the State of Ohio, heretofore, to wit, on the 3d day of September, in the year of our Lord 1866, before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States did, in a loud voice, declare in substance and effect among other things, that is to say:

"I will tell you what I did do. I called upon your Congress that is trying to break up the Government

* * * * * * *

"In conclusion, beside that, Congress had taken much pains to poison their constituents against him. But what had Congress done? Have they done anything to restore the union of these States? No; on the contrary, they had done everything to prevent it; and because he stood now where he did when the rebellion commenced he had been denounced as a traitor. Who had run greater risks or made greater sacrifices than himself? But Congress, factious and domineering, had undertaken to poison the minds of the American people."

Specification third.—In this, that at St. Louis, in the State of Missouri, heretofore, to wit, on the 8th day of September, in the year of our Lord 1866, before a public assemblage of citizens and others, said Andrew Johnson, President of the United States, speaking of and concerning the Congress of the United States, did, in a loud voice, declare, in substance and effect, among other things, that is to say:

"Go on. Perhaps if you had a word or two on the subject of New Orleans you might understand more about it than you do. And if you will go back-if you win go back and ascertain the cause of the riot at New Orleans, perhaps you will not be so prompt in calling out 'New Orleans.' If you will take up the riot at New Orleans and trace it back to its source or its immediate cause, you will find out who was responsible for the blood that was shed there. If you will take up the riot at New Orleans and trace it back to the Radical Congress, you will find that the riot at New Orleans was substantially planned. If you will take up the proceedings in their caucuses, you will understand that they there knew that a convention was to be called which was extinct by its power having expired; that it was said that the intention was that a new government was to be organized, and on the organization of that government the intention was to enfranchise one portion of the population, called the colored population, who had just been emancipated, and at the same time disfranchise white men. When you design to talk about New Orleans you ought to understand what you are talking about. When you read the speeches that were made, and take up the facts on the Friday and Saturday before that convention sat, you will there find that speeches were made incendiary in their character, exciting that portion of the population, the black population, to arm themselves and prepare for the shedding of blood. You will also find that that convention did assemble in violation of law, and the intention of that convention was to supersede the reorganized authorities in the State government of Louisiana, which had been recognized by the Government of the United States; and every man engaged in that rebellion in that convention, with the intention of superseding and upturning the civil government which had been recognized by the Government of the United States, I say that he was a traitor to the Constitution of the United States, and hence you find that another rebellion was commenced having its origin in the Radical Congress. *

"So much for the New Orleans riot. And there was the cause and the origin of the blood that was shed; and every drop of blood that was shed is upon their skirts, and they are responsible for it. I could test this thing a little closer, but will not do it here to-night. But when you talk about the causes and

consequences that resulted from proceedings of that kind, perhaps as I have been introduced here and you have provoked questions of this kind, though it does not provoke me, I will tell you a few wholesome things that have been done by this Radical Congress in connection with New Orleans and the extension of the elective franchise.

"I know that I have been traduced and abused. I know it has come in advance of me here, as elsewhere, that I have attempted to exercise an arbitrary power in resisting laws that were intended to be forced upon the Government; that I had exercised that power; that I had abandoned the party that elected me, and that I was a traitor because I exercised the veto power in attempting and did arrest for a time a bill that was called a 'Freedman's Bureau' bill; yes, that I was a traitor. And I have been traduced, I have been slandered, I have been maligned, I have been called Judas Iscariot, and all that. Now, my countrymen here to-night, it is very easy to indulge in epithets; it is easy to call a man a Judas and cry out traitor; but when he is called upon to give arguments and facts he is very often found wanting. Judas Iscariot—Judas. There was a Judas, and he was one of the twelve apostles. Oh, yes; the twelve apostles had a Christ. The twelve apostles had a Christ, and he never could have had a Judas unless he had had twelve apostles. If I have played the Judas, who has been my Christ that I have played the Judas with? Was it Thad. Stevens? Was it Wendell Phillips? Was it Charles Summer? These are the men that stop and compare themselves with the Saviour; and everybody that differs with them in opinion, and to try and stay and arrest the diabolical and nefarious policy, is to be denounced as a Judas.

* * * * * *

"Well, let me say to you, if you will stand by me in this action; if you will stand by me in trying to give the people a fair chance, soldiers and citizens, to participate in these offices, God being willing, I will kick them out. I will kick them out just as fast as I can.

"Let me say to you, in concluding, that what I have said I intended to say. I was not provoked into this, and I care not for their menaces, the taunts, and the jeers. I care not for threats. I do not intend to be bullied by my enemies nor overawed by my friends. But, God willing, with your help I will veto their measures whenever any of them come to me."

Which said utterances, declarations, threats, and harangues, highly censurable in any, are peculiarly indecent and unbecoming in the Chief Magistrate of the United States, by means whereof said Andrew Johnson has brought the high office of the President of the United States into contempt, ridicule, and disgrace, to the great scandal of all good citizens, whereby said Andrew Johnson, President of the United States, did commit, and was then and there guilty of, a high misdemeanor in office.

ARTICLE XI.

That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and of his oath of office, and in disregard of the Constitution and laws of the United States, did heretofore, to wit, on the 18th day of August, 1866, at the city of Washington, and the District of Columbia, by public speech, declare and affirm, in substance, that the Thirty-ninth Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative power under the same; but, on the contrary, was a Congress of only part of the States, thereby denying and intending to deny that the legislation of said Congress was valid or obligatory upon him, the said Andrew Johnson, except in so far as he saw fit to approve the same, and also thereby denying and intending to deny the power of the said Thirty-ninth Congress to propose amendments to the Constitution of the United States; and, in pursuance of said declaration, the said Andrew Johnson, President of the United States, afterwards, to wit, on the 21st day of February, 1868, at the city of Washington, in the District of Columbia, did unlawfully and in disregard of the requirements of the Constitution, that he should take care that the laws be faithfully executed, attempt to prevent the execution of an act entitled "An act regulating the tenure of certain civil offices," passed March 2, 1867, by unlawfully devising and contriving, and attempting to devise and contrive, means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of the office of Secretary for the Department of War, notwithstanding the refusal of the Senate to concur in the suspension theretofore made by said Andrew Johnson, of said Edwin M. Stanton from said office of Secretary for the Department of War, and also by further unlawfully devising and contriving, and attempting to devise and contrive, means then and there to prevent the execution of an act entitled "An act making appropriations for the support of the Army

for the fiscal year ending June 30, 1868, and for other purposes," approved March 2, 1867, and also to prevent the execution of an act entitled "An act to provide for the more efficient government of the rebel States," passed March 2, 1867; whereby the said Andrew Johnson, President of the United States, did then, to wit, on the 21st day of February, 1868, at the city of Washington, commit and was guilty of a high misdemeanor in office.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles or other accusation or impeachment against the said Andrew Johnson, President of the United States, and also of replying to his answers which he shall make unto the articles herein preferred against him, and of offering proof to the same and every part thereof, and to all and every other article, accusation, or impeachment which shall be exhibited by them, as the case shall require, do demand that the said Andrew Johnson may be put to answer the high crimes and misdemeanors in office herein charged against him, and that such proceedings, examinations, trials, and judgments may be thereupon had and given as may be agreeable to law and justice.

SCHUYLER COLFAX,

Speaker of the House of Representatives.

Attest:

EDWARD McPherson,

Clerk of the House of Representatives.

Mr. Bingham having concluded the reading of the articles of impeachment, the President pro tempore informed the managers that the Senate would take proper order on the subject of the impeachment, of which due notice would be given to the House of Representatives.

The managers, by their chairman, Mr. Bingham, then delivered the articles of impeachment at the table of the Secretary, and withdrew, accompanied by the Members of the House of Representatives.

The Committee of the Whole, having returned to the Hall of the House, 1 rose and the Speaker resumed the chair, whereupon Mr. Henry L. Dawes, of Massachusetts, the chairman, reported:

Mr. Speaker: The House in the Committee of the Whole, by order of the House, have accompanied their managers to the Senate while they presented, in the name of the House of Representatives and of all the people of the United States, articles of impeachment agreed upon by the House against Andrew Johnson, President of the United States. The President of the Senate announced that the Senate would take order in the premises, of which due notice would be given to the House of Representatives.

2421. President Johnson's impeachment continued.

Resolution providing for introduction of the Chief Justice and the organization of the Senate for the trial of President Johnson.

The Senate ordered a copy of its rules for the trial of President Johnson to be sent to the House.

The notice to the Chief Justice to meet the Senate for the trial of President Johnson was delivered by a committee of three Senators, who were his escort also.

In the Senate, on the same day, Mr. Howard moved ² the adoption of the following:

Resolved, That at 1 o'clock to-morrow afternoon the Senate will proceed to consider the impeachment of Andrew Johnson, President of the United States, at which time the oath or affirmation required by the rules of the Senate sitting for the trial of an impeachment shall be administered by the Chief

¹ House Journal, p. 471; Globe, p. 1661.

² Senate Journal, p. 268; Globe, pp. 1657, 1658.

Justice of the United States, as the presiding officer of the Senate, sitting as aforesaid, to each member of the Senate, and that the Senate sitting as aforesaid will at the time aforesaid receive the managers appointed by the House of Representatives.

Ordered, That the Secretary lay this resolution before the House of Representatives.

Ordered, That the articles of impeachment exhibited against Andrew Johnson, President of the United States, be printed.

Ordered, That a copy of the "rules of procedure and practice in the Senate when sitting on the trial of impeachments" be communicated by the Secretary to the House of Representatives, and a copy thereof delivered by him to each member of the House.

Mr. George F. Edmunds proposed a simpler resolution, taking the ground that the pending resolution, in some respects, provided for what had already been provided in the rules. But Mr. Howard replied that the House was not obliged to take cognizance of the rules. The resolutions and orders were then agreed to as offered. The communication was duly received in the House.¹

Thereupon, on motion of Mr. Stephen C. Pomeroy, of Kansas,

Ordered, That the notice to the Chief Justice of the United States to meet the Senate in the trial of the case of impeachment, and requesting his attendance as presiding officer, be delivered to him by a committee of three Senators, to be appointed by the Chair, who shall wait upon the Chief Justice to the Senate Chamber and conduct him to the chair.

The President pro tempore appointed Messrs. Pomeroy, Henry Wilson, of Massachusetts, and Charles R. Buckalew, of Pennsylvania, the committee.

2422. President Johnson's impeachment continued.

The ceremonies of inducting the Chief Justice and organizing the Senate for the trial of President Johnson.

The President pro tempore left the chair at the hour for the Senate to sit for the trial of the President.

On taking the chair to preside at the trial of President Johnson the Chief Justice had the oath administered by an associate justice.

Having taken the oath himself the Chief Justice administered it to the Senators sitting for the trial of President Johnson.

After the oath had been administered to the Senators sitting for the trial of President Johnson the Sergeant-at-Arms was directed to make proclamation.

The Senate having organized for the trial of President Johnson, rules were adopted and the House was notified of the organization and of readiness to receive the managers.

On March 5^2 in the Senate the hour of 1 o'clock having arrived, the President pro tempore said:

The morning hour having expired, all legislative and executive business of the Senate is ordered to cease for the purpose of proceeding to business pertaining to the impeachment of the President of the United States. The chair is vacated for that purpose.

The President pro tempore then left the chair.

The Chief Justice of the United States entered the Chamber, accompanied by Mr. Justice Nelson, and escorted by Senators Pomeroy, Wilson, and Buckalew, the committee appointed for that purpose.

¹ House Journal, p. 475.

² Senate Journal, pp. 809, 810; Globe, p. 1671.

The Chief Justice took the chair and said:

Senators: I attend the Senate in obedience to your notice, for the purpose of joining with you in forming a court of impeachment for the trial of the President of the United States, and I am now ready to take the eath $^{\rm I}$

The oath was administered by Mr. Justice Nelson to Chief Justice Chase in the following words:

I do solemnly swear that in all things appertaining to the trial of the impeachment of Andrew Johnson, President of the United States, I will do impartial justice according to the Constitution and laws. So help me God.

[The Senators rose when the Chief Justice entered the Chamber and remained standing till the conclusion of the administration of the oath to him.]

The CHIEF JUSTICE. Senators, the oath will now be administered to the Senators as they will be called by the Secretary in succession. [To the Secretary.] Call the roll.

The administration of the oath then proceeded until the name of Mr. Benj. F. Wade, of Ohio, was called, when a question was raised as to his competency to Vote.²

If the managers on the part of the House of Representatives were present during this proceeding, it was informally, as no mention is made of their presence.

On March 6³ the question as to Mr. Wade's right to vote was withdrawn, and the administration of the oath was concluded.

Thereupon the following occurred:

All the Senators present having taken the oath required by the Constitution, the Senate is now organized for the purpose of proceeding to the trial of the impeachment of Andrew Johnson, President the United States. The Sergeant-at-Arms will make proclamation.

The SERGEANT-AT-ARMS. Hear ye, hear ye, hear ye. All persons are commanded to keep silence on pain of imprisonment while the Senate of the United States is sitting for the trial of the articles of impeachment against Andrew Johnson, President of the United States.

After the Chief Justice had submitted the question: "Shall the rules of proceeding adopted by the Senate on the 2d of March be the rules of proceeding in the trial of the impeachment?", and the same had been determined in the affirmative, Mr. Howard offered the following order, which was agreed to:

Ordered, That the Secretary of the Senate notify the House of Representatives that the Senate is now organized for the trial of the articles of impeachment against Andrew Johnson, President of the United States, and is ready to receive the managers of the impeachment at its bar.

2423. President Johnson's impeachment continued.

The House did not attend the managers in making the formal demand that the Senate take process against President Johnson.

The House managers having demanded process against President Johnson, the Senate ordered a summons to issue, returnable on a given date.

¹The Journal has this record "By direction of the Chief Justice the following oath was administered to him," etc. The Senate, in adopting rules for the trial, had assumed that the Chief Justice would not be sworn. See proceedings on Rule XXIV, section 2080 of this volume.

² For discussion of this question see section 2061 of this volume.

³ Senate Journal, p. 811; Globe, p. 1701.

The sessions of the Senate sitting for an impeachment trial may adjourn for more than three days.

The managers, having returned from demanding that process be issued against President Johnson, reported verbally to the House.

The managers of the impeachment of President Johnson were given leave to sit during sessions of the House and power to compel testimony.

A question had arisen in the House ¹ as to whether or not the House should attend the managers, and Mr. Bingham said:

Mr. Speaker, after consultation with the managers on the part of the House, I am instructed by them to say to the House that, inasmuch as this is a mere formal proceeding to-day, they do not suppose it to be necessary or according to usage to ask the House to attend them to the bar of the Senate until the issue shall be joined.

In due time the managers (excepting Mr. Stevens), appeared ² at the bar of the Senate, and their presence was announced by the Sergeant-at-Arms.

The Chief Justice said:

The managers of the impeachment on the part of the House of Representatives will please take the seats assigned to them.

The managers having been seated in the area in front of the chair,

Mr. Manager Bingham rose and said:

Mr. President, we are instructed by the House of Representatives, as its managers, to demand that the Senate take process against Andrew Johnson, President of the United States, that he may answer at the bar of the Senate upon the articles of impeachment heretofore preferred by the House of Representatives through its managers before the Senate.

Mr. Howard, a Senator, thereupon moved the following order, which was agreed to: 3

Ordered, That a summons do issue, as required by the rules of procedure and practice in the Senate when sitting on the trial of impeachments, to Andrew Johnson, returnable on Friday, the 13th day of March instant, at 1 o'clock in the afternoon.

After a subject relating to an amendment of the rules had been disposed of, Mr. Howard moved that the Senate sitting for the trial of the President upon articles of impeachment,⁴ adjourn to Friday, the 13th of March instant, at 1 o'clock afternoon.

This motion was agreed to, and the Chief Justice thereupon declared the Senate sitting for the trial of impeachments adjourned to the time named and vacated the chair.

The President pro tempore resumed the chair and called the Senate to order.⁵ The managers, having returned to the House, appeared at the bar,⁶ and being recognized by the Speaker, Aft. Bingham said:

I have the honor to report, on behalf of the managers in the matter of the impeachment of Andrew Johnson, President of the United States, that the Senate has organized for the trial of the impeachment;

¹ Globe, p. 1683.

²Senate Journal, p. 816; Globe, p. 1701.

 $^{^3\,\}mathrm{Senate}$ Journal, p. 823; Globe, p. 1701.

 $^{^4}$ The Globe (p. 1701) indicates that Mr. Howard used the word "court," but the Journal does not permit the word.

⁵ Senate Journal, pp. 276—823; Globe, p. 1701.

⁶ House Journal, p. 484; Globe, p. 1711.

that in the name of the House of Representatives and in the behalf of all the people of the United States, the managers have demanded of the Senate that process be issued against Andrew Johnson, President of the United States, to answer to the articles heretofore exhibited against him at the bar of the Senate; and that the Senate has advised us that process will be issued against him in that behalf, returnable on the 13th instant, at 1 o'clock p.m.

On March 6,1 also in the House, Mr. Bingham offered the following:

Resolved, That the managers on the part of the House, in the matter of the impeachment of the President, be, and hereby are, authorized to sit during the sessions of the House, and shall have power to send for persons and papers, administer oaths, and take the testimony of witnesses.

Mr. Bingham explained that this was desired to enable the managers to administer oaths to witnesses. The resolution was agreed to, yeas 89, nays 25.

2424. President Johnson's impeachment continued.

Ceremonies at the return of the summons to President Johnson to appear and answer the articles of impeachment.

Form used by the Sergeant-at-Arms in calling President Johnson to appear and answer the articles of impeachment.

President Johnson entered his appearance by a letter addressed to the Chief Justice and naming the counsel to appear for him.

President Johnson by his own letter and by a paper filed and signed by his counsel asked forty days in which to prepare his answer.

The House in Committee of the Whole, on notice from the Senate, attended on the return day of the summons to President Johnson.

The Chief Justice held, in the Senate sitting for the trial of President Johnson, that the journal should be read before other proceedings.

On March 13² at 1 p.m. the Chief Justice entered the Senate Chamber, resumed the chair, and said (to the Sergeant-at-Arms):

Make proclamation.

The SERGEANT-AT-ARMS. Hear ye! hear ye. All persons are commanded to keep silence while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Andrew Johnson, President of the United States.

Propositions being made to notify the House of Representatives and also that several Senators be sworn, the Chief Justice said:

The first business is to read the journal of the last session of the court. The Senators will be sworn in afterwards.

The Secretary read the journal of the proceedings of the Senate sitting for the trial of impeachment of Andrew Johnson, President of the United States, on Friday, March 6, 1868.

Mr. Jacob M. Howard, of Michigan, submitted this order, which was agreed to:

Ordered, That the Secretary inform the House of Representatives that the Senate is in its Chamber, and ready to proceed with the trial of Andrew Johnson, President of the United States, and that seats are provided for the accommodation of the Members.

This message being received in the House,³ that body resolved itself into Committee of the Whole, with Mr. Elihu B. Washburne, of Illinois, in the chair, and thereupon attended the managers to the Senate.

¹House Journal, p. 481; Globe, p. 1706.

 $^{^2}$ House Journal, p. 519; Globe, p. 1869.

³ Senate Journal, p. 824; Globe Supplement, p. 6.

The managers having appeared at the bar, were announced by the Sergeantat-Arms and conducted to the position assigned them.

The oath was then administered to several Senators not previously sworn.

Then the following proceedings occurred: 1

The CHIEF JUSTICE. The Secretary of the Senate will read the return of the Sergeant-at-Arms to the summons directed to be issued by the Senate.

The Chief Clerk read the following return appended to the writ of summons:

The foregoing writ of summons, addressed to Andrew Johnson, President of the United States, and the foregoing precept, addressed to me, were this day duly served on the said Andrew Johnson, President of the United States, by delivering to and leaving with him true and attested copies of the same at the Executive Mansion, the usual place of abode of the said Andrew Johnson, on Saturday, the 7th day of March instant, at 7 o'clock in the afternoon of that day.

GEORGE T. BROWN,

Sergeant-at-Arms of the United States Senate.

Washington, March 7, 1863.

The Chief Clerk administered to the Sergeant-at-Arms the following oath:

I, George T. Brown, Sergeant-at-Arms of the Senate of the United States, do swear that the return made and subscribed by me upon the process issued on the 7th day of March, A. D. 1868, by the Senate of the United States against Andrew Johnson, President of the United States, is truly made, and that I have performed said service therein prescribed. So help me God.

The CHIEF JUSTICE. The Sergeant-at-Arms will call the accused.

The SERGEANT-AT-ARMS. Andrew Johnson, President of the United States, Andrew Johnson, President of the United States, appear and answer the articles of impeachment exhibited against you by the House of Representatives of the United States.

There being no response, Mr. Reverdy Johnson, of Maryland, a Senator, made this suggestion:

I understand that the President has retained counsel, and that they are now in the President's room attached to this wing of the Capitol. They are not advised, I believe, of the court being organized. I move that the Sergeant-at-Arms inform them of that fact.

The CHIEF JUSTICE. If there be no objection, the Sergeant-at-Arms will so inform the counsel of the President.

The Sergeant-at-Arms presently returned with Hon. Henry Stanbery, of Kentucky; Hon. Benjamin R. Curtis, of Massachusetts, and Hon. Thomas A. R. Nelson, of Tennessee, who were conducted to the seats assigned the counsel of the President.

Then the following occurred:

The Sergeant-at-Arms announced the Members of the House of Representatives, who entered the Senate Chamber preceded by the chairman of the Committee of the Whole House (Mr. E. B. Washburne, of Illinois), into which that body had resolved itself to witness the trial, who was accompanied by the Speaker and Clerk.

The Chief Justice (to the counsel for the President). Gentlemen, the Senate is now sitting for the trial of the President of the United States, upon articles of impeachment exhibited by the House of Representatives. The court will now hear you.

Mr. Stanbery. Mr. Chief Justice, my brothers Curtis and Nelson and myself are here this morning as counsel for the President. I have his authority to enter his appearance, which, with your leave, I will proceed to read:

"In the matter of the impeachment of Andrew Johnson, President of the United States.

"Mr. CHIEF JUSTICE: I, Andrew Johnson, President of the United States, having been served with a summons to appear before this honorable court, sitting as a court of impeachment to answer certain articles of impeachment found and presented against me by the honorable the House of Repre-

¹ Globe Supplement, p. 6.

sentatives of the United States, do hereby enter my appearance by my counsel, Henry Stanbery, Benjamin R. Curtis, Jeremiah S. Black, William M. Evarts, and Thomas A. R. Nelson, who have my warrant and authority therefore, and who are instructed by me to ask of this honorable court a reasonable time for the preparation of my answer to said articles.

"After a careful examination of the articles of impeachment and consultation with my counsel, I am satisfied that at least forty days will be necessary for the preparation of my answer, and I respectfully ask that it be allowed.

"Andrew Johnson."

The CHIEF JUSTICE. The paper will be filed.

Mr. Stanbery. Mr. Chief Justice, I have also a professional statement in support of the application. Whether it is in order to offer it now or to wait until the appearance is entered your Honor will decide.

The Chief Justice. The appearance will be considered as entered. You may proceed. Mr. Stanbery. I will read the statement.

"In the matter of the impeachment of Andrew Johnson, President of the United States.

"Henry Stanbery, Benjamin R. Curtis, Jeremiah S. Black, William M. Evarts, and Thomas A. R. Nelson, of counsel for the respondent, move the court for the allowance of forty days for the preparation of the answer to the articles of impeachment, and in support of the motion make the following professional statement:

"The articles are eleven in number, involving many questions of law and fact. We have, during the limited time and opportunity afforded us, considered as far as possible the field of investigation which must be explored in the preparation of the answer, and the conclusion at which we have arrived is that with the utmost diligence the time we have asked is reasonable and necessary.

"The precedents as to time for answer upon impeachments before the Senate, to which we have had opportunity to refer, are those of Judge Chase and Judge Peck.

"In the case of Judge Chase time was allowed from the 3d of January until the 4th of February next succeeding to put in his answer, a period of thirty-two days; but in this case there were only eight articles, and Judge Chase had been for a year cognizant of most of the articles, and had been himself engaged in preparing to meet them.

"In the case of Judge Peck there was but a single article. Judge Peck asked for time from the 10th to the 25th of May to put in his answer, and it was granted. It appears that Judge Peck had been long cognizant of the ground laid for his impeachment, and had been present before the committee of the House upon the examination of the witnesses, and had been permitted by the House of Representatives to present to that body an elaborate answer to the charges.

"It is apparent that the President is fairly entitled to more time than was allowed in either of the foregoing cases. It is proper to add that the respondents in these cases were lawyers, fully capable of preparing their own answers, and that no pressing official duties interfered with their attention to that business; whereas the President, not being a lawyer, must rely on his counsel. The charges involve his acts, declarations, and intentions, as to all which his counsel must be fully advised upon consultation with him, step by step, in the preparation of his defense. It is seldom that a case requires such constant communication between client and counsel as this, and yet such communication can only be had at such intervals as are allowed to the President from the usual hours that must be devoted to his high official duties.

"We further beg leave to suggest for the consideration of this honorable court that as counsel, careful as well of their own reputation as of the interests of their client in a case of such magnitude as this, so out of the ordinary range of professional experience, where so much responsibility is felt, they submit to the candid consideration of the court that they have a right to ask for themselves such opportunity to discharge their duty as seems to them to be absolutely necessary.

"Henry Stanbery,
"B. R. Curtis,
"Jeremiah S. Black, per H. S.
"William M. Evarts, per H. S.
"Thomas A. R. Nelson,
"Of Counsel for the Respondent.

2425. President Johnson's impeachment continued.

The Senate denied the motion of President Johnson's counsel that he be allowed forty days to answer and granted ten days.

The managers urged, in view of Rule VIII, that President Johnson should answer on the return day, but were overruled.

Review of English precedents as to the distinction between the pleadings and the trial of an impeachment.

The Senate deliberated in secret session on the application of President Johnson for time to prepare his answer.

The proceedings of secret sessions of the Senate in the Johnson trial appear in the Journal, but the debates were not recorded.

Immediately ¹ Mr. Manager Bingham raised the question that under the language of the eighth rule the motion for continuance was not allowable, the provision of the rule being that if the respondent appeared he should answer, the terms of the rule being:

If the accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed therefor, as aforesaid, or appearing shall fail to file his answer to such articles of impeachment, the trial shall proceed nevertheless as upon a plea of not guilty.

Counsel for the respondent argued that it would be oppressive for the proceedings to be so hastened, and an innovation upon even the worst precedents in English history. Assuming, apparently, that they must at once proceed to trial, they stated that they could not summon their witnesses until the pleadings were prepared. Mr. Henry Stanbery further said:

Rule 9 provides:

"At 12 o'clock and 30 minutes afternoon of the day appointed for the return of the summons against the person impeached."

This is the return day; it is not the trial day. The letter answers the gentlemen. According to the letter of the eighth rule they say "this is the trial day; go on; not a moment's delay; file your answer and proceed to trial; or without your answer let a general plea of not guilty be entered, and proceed at once with the trial." The ninth rule says this is the return day, not the trial day. Then the tenth rule says:

"The person impeached shall then be called to appear and answer the articles of impeachment against him."

That is the call made on the return day. The accused is called to appear and answer. He is here; he appears; he states his willingness to answer; he only asks a reasonable time to prepare the answer. Then rule 11 speaks "of the day appointed for the trial." That is not this day. This day, the day which the gentlemen would make the first day of the trial, is, in your own rules, put down for the return day, and you must have some other day for the trial day to suit the convenience of the parties; so that the letter of one rule answers the letter of another rule.

Mr. Manager Bingham replied that the making up of the issue and the trial were distinct matters. Citing a precedent, he said:

A very remarkable case in the twelfth volume of State Trials lies before me, wherein Lord Holt presided, on the trial of Sir Richard Grahme, Viscount Preston, and others, charged with high treason. In that case the accused appeared, as the accused by the learned gentlemen appears this morning, after the indictment presented in the court, and before plea asked for continuance. The answer that fell from the lips of the Lord Chief justice was, we are not to consider the question of trial or the time of trial until plea be pleaded. Let me give his very words:

¹Globe Supplement, p. 7.

"L. C. HOLT. My lord, we debate the time of your trial too early; for you must put yourself upon your trial first by pleading."

And when Lord Preston presses him again on the point Lord Chief Justice Holt responds:

"My lord, we cannot dispute with you concerning your trial till you have pleaded. I know not what you will say to it; for aught I know there may be no occasion for a trial. I can not tell what you will plead; your lordship must answer to the indictment before we can enter into the debate of this matter." (12 State Trials, 664.)

The eighth rule of the Senate, last clause, provides that if the party appearing shall plead guilty there may be no further proceedings in the case, no trial about it; nothing remains to be done but to pronounce judgment under the Constitution. It is time enough for us to talk about a trial when we have an issue. The rule is a plain one, a simple one.

And I may be pardoned for saying that I fail to perceive anything in rules 10 or 11 to which the learned counsel have referred that by any kind of construction can be supposed to limit the effect of the words in rule 8, to wit:

"If the accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed therefor as aforesaid, or appearing shall fail to file his answer [on the day on which he is summoned to appear], the trial shall proceed nevertheless as upon a plea of not guilty."

When words are plain in a written law there is an end to all construction; they must be followed. The managers so thought when they appeared at this bar. All they ask is the enforcement of the rule, not a postponement of forty days, and at the end of that time to be met with a dilatory plea—a motion, if you please—to quash the articles, or a question raising the inquiry whether this is the Senate of the United States.

The Chief Justice being about to put the motion submitted by the counsel for the respondent, Mr. George F. Edmunds, of Vermont, submitted ¹ the following:

Ordered, That the respondent file his answer to the articles of impeachment on or before the 1st day of April next, and that the managers of the impeachment file their replication thereto within three days thereafter, and that the matter stand for trial on Monday, April 6, 1868.

Then, on motion of Mr. Oliver P. Morton, of Indiana, it was voted "that the Senate retire to deliberate and confer in regard to its determination of the question." The Journal indicates that the Chief Justice retired with the Senate. The proceedings during the secret session were recorded in the Journal, but not in the report of the trial. As soon as the Senate had assembled in the conference chamber, Mr. Charles D. Drake, of Missouri, moved to strike out of Mr. Edmunds's resolution all after the word "Resolved" and insert: "That the respondent file answer to the articles of impeachment on or before Friday, the 20th day of March instant."

At first this was agreed to, yeas 28, nays 20, but on motion of Mr. Lyman Trumbull, of Illinois, and by a vote of yeas 27, nays 23, the vote was reconsidered, and then Mr. Drake's amendment was amended by striking out the words "Friday, the 20th," and inserting "Monday, the 23d." The amendment as amended was agreed to, and then the order as amended was agreed to.

The Senate then returned to its Chamber; and the Chief Justice announced to the counsel for the President that their motion to be allowed forty days to pre-

¹ Senate Journal. p. 826; Globe Supplement, p. 826.

² In former trials the Journal did not record the secret sessions. It seems to have been considered that the Constitution and the rules required the Journal to be kept. See remarks of Mr. Edmunds, Globe, p. 1886.

³ Senate Journal, pp. 826, 827.

pare and file answer to the articles of impeachment was denied, and that the Senate had adopted the following order:

Ordered, That the respondent file answer to the articles of impeachment on or before Monday, the 23d day of March instant.

2426. President Johnson's impeachment continued.

After argument as to the propriety of delay, the Senate determined that the trial of President Johnson should proceed immediately after replication should be filed.

The Chief Justice held, in the Johnson impeachment, that both managers and counsel might be heard on a motion of a Senator to fix the time for the trial to begin.

Then, by instruction of the managers, Mr. Manager Bingham submitted ¹ the following motion:

The managers ask, the Senate respectfully to adopt the following order:

"Ordered, That upon the filing of a replication by the managers on the part of the House of Representatives the trial of Andrew Johnson, President of the United States, upon the articles of impeachment exhibited by the House of Representatives shall proceed forthwith."

The question being put on agreeing to the order, there appeared, yeas 25, nays 26. So the order was disagreed to.

Thereupon, Mr. John Sherman, of Ohio, a Senator, offered ² the following:

Ordered, That the trial of the articles of impeachment shall proceed on the 6th day of April next.

Mr. Henry Wilson, of Massachusetts, a Senator, moved to amend by striking out "the 6th day of April" and inserting "the 1st day of April."

Mr. Manager Butler thereupon asked if the managers might be heard on the motion.

The Chief Justice replied:

The Chair is of opinion that the managers have a right to be heard and also the counsel for the accused.

Mr. Manager Butler thereupon argued for a speedy trial. The precedents for delay, which might be cited from the case of Judge Chase, were not applicable, since the railroads and telegraph had revolutionized means of communication. As justifying and enforcing the need of expedition, Mr. Butler said:

The ordinary delays in court, the ordinary time given in ordinary cases for men to answer when called before tribunals of justice, have no application to this case. The rules by which cases are heard and determined before the Supreme Court of the United States are not rules applicable to the case at bar; and for this reason, if for no other, when ordinary trials are had, when ordinary questions are examined at the bar of any court, there is no danger to the common weal in delay, the Republic may take no detriment if the trial is postponed; to give the accused time injures nobody; to grant him indulgence hurts no one, and may help one, and perhaps an innocent man. But here the House of Representatives have presented at the bar of the Senate, in the most solemn form, the Chief Executive officer of the nation. They say (and they desire your judgment upon their accusation) that he has usurped power which does not belong to him; that he is at this very time breaking the laws solemnly enacted by you, the Senate, and those who present him here, the Congress of the United States, and that he still proposes so to do.

¹ Senate Journal, p. 827; Globe Supplement, p. 8.

² Senate Journal, pp. 827, 828; Globe Supplement, pp. 8-11.

Sir, who is the criminal—I beg pardon for the word—the respondent at the bar? He is the Chief Executive of the nation, and when I have said that, I have taken out from all ordinary rules this trial, because I submit with deference that here and now, for the first time in the history of the world, has any nation brought its ruler to the bar of its highest tribunal in a constitutional method, under the rules and forms prescribed by its Constitution, and therefore all the rules, all the analogies, all the likeness to a common and ordinary trial of any cause, civil or criminal, cease at once, are silent, and ought not to weigh in judgment. Other nations have tried and condemned their kings and rulers, but the process has always been in violence and subversive of their constitutions and framework of government, not in submission to and accordance with it.

When I name the respondent as the Chief Executive, I say he is the Commander in Chief of your armies; he specially claims that command, not by force and under the limitations of your laws, but as a prerogative of his office and subject to his arbitrary will. He controls, through his subordinates, your Treasury. He commands your Navy. Thus he has all elements of power. He controls your foreign relations. In any hour of passion, of prejudice, of revenge for fancied wrong in his own mind, he may complicate your peace with any nation of the earth, even while he is being arraigned as a respondent at your bar. And mark me, sir, may I respectfully submit that the very question here at issue this day and this hour is, whether he shall control beyond the reach of your laws, and outside of your laws, the Army of the United States. The one greatest of all questions here at issue is whether he shall be able, against law—setting aside your laws, setting aside the decrees of the Senate, setting aside the laws enacted by Congress, overriding the legislative power of the country, claiming it as an attribute of executive power only, to control the great military arm of this Government, and control it if he chooses at his own good pleasure, its your ruin and the ruin of the country.

Mr. Nelson, counsel for the respondent, in pleading for delay, said:

Mr. Chief Justice, I need not tell you, nor need I tell many of the honorable Senators whom I address on this occasion, many of whom are lawyers, many of whom have been clothed in times past with the judicial ermine, that in the courts of law the vilest criminal who ever was arraigned in the United States has been given time for preparation, time for hearing, The Constitution of the country secures to the vilest man in the land the right not only to be heard himself, but to be heard by counsel; and no matter how great his crime, no matter how deep may be the malignity of the offense with which he is charged, he is tried according to the forms of law; he is allowed to have counsel; continuances are granted to him; if he is unable to obtain justice, time is given to him, and all manner of preparation is allowed him.

If this is so in courts of common law, that are fettered and bound by the iron rules to which I have adverted, how much more in a great tribunal like this that does not follow the precedents of law, but that is aiming and seeking alone to attain justice, ought we to be allowed ample time for preparation in reference to charges of the nature which we have here? How much more, sir, should such time be given us?

We are told that the President acted in regard to one of the matters which is charged against him by the House of Representatives on the 21st of February, and that by the 4th of March—if I did not mistake the statement of the honorable manager—the House of Representatives had presented this accusation against the President of the United States; and, that, therefore, the President, who knew what he was doing, should be prepared for his defense. Mr. Chief Justice, is it necessary for me to remind you and honorable Senators that you can upon a page of foolscap paper prepare a bill of indictment against an individual which may require weeks in the investigation? Is it necessary for me to remind this honorable body that it is an easy thing to make charges, but that it is often a laborious and difficult thing to make a defense against those accusations?

Reasoning from the analogy furnished by such proceedings at law, I earnestly maintain before this honorable body that suitable time should be given us to answer the charges which are made here. A large number of these charges—those of them connected with the President's action in reference to the Secretary of War—involve questions of the deepest importance. They involve an inquiry running back to the very foundation of the Government; they involve an examination of the precedents which have been set by different administrations; they involve, in short, the most extensive range of inquiry. The two last charges that were presented by the House of Representatives, if I may be pardoned for using the expression in the view which I entertain of them, open Pandora's box, and will cause an inves-

tigation as to the great differences of opinion which have existed between the President and the House of Representatives, an inquiry which, so far as I can perceive, will be almost interminable in its character.

Mr. Manager Bingham, in arguing against delay, commented on the fact that no formal application had been made by the accused himself for delay. Mr. Bingham also referred to the fact that in the case of Judge Chase the trial had been ordered to proceed on the day the answer was received.

Mr. Roscoe Conkling, of New York, a Senator, proposed to the order offered by Mr. Sherman this amendment:

Strike out all after the word "ordered" and insert: "That unless otherwise ordered by the Senate, for cause shown, the trial of the pending impeachment shall proceed immediately after replication shall be filed."

This amendment was agreed to—yeas 40, nays 10; and then the order as amended was agreed to, as follows:

Ordered, That, unless otherwise ordered by the Senate for cause shown, the trial of the pending impeachment shall proceed immediately after replication shall be filed.

Then, on motion of Mr. Jacob M. Howard, of Michigan,

the Senate sitting for the trial of the President upon articles of impeachment, adjourned to Monday, the 23d day of March instant, at 1 o'clock p.m.

2427. President Johnson's impeachment continued.

The House, by a standing order, determined to attend in Committee of the Whole, the trial of President Johnson.

Forms of procedure at the change in the Senate from a legislative session to a session for the trial of the President.

During the trial of the President the Chief Justice was escorted to the chair by the chairman of a committee of the Senate.

The House attended at each session of the trial of the President on notice from the Senate.

The sessions of the Senate for the trial of the President were opened by proclamation.

The managers were announced when they attended in the Senate for the trial of the President, but the counsel for respondent entered unannounced.

The House of Representatives was announced when, as a Committee of the Whole, it attended the trial of the President.

On March 20,1 in the House, Mr. George S. Boutwell, under suspension of the rules, presented the following resolution, which was agreed to by the House without division:

Resolved, That on the days when the Senate shall sit for the trial of the President upon the articles of impeachment exhibited by the House of Representatives, the House, in Committee of the Whole, will attend with the managers at the bar of the Senate at the hour named for the commencement of the proceedings.

On March 23,² in the House, a message was received from the Senate by their Secretary, that—

¹ Second session Fortieth Congress, House Journal, pp. 549, 550; Globe, p. 2021.

² House Journal, p. 561; Globe, p. 2071.

the Senate is in its Chamber and ready to proceed on the trial of Andrew Johnson, President of the United States, and that seats are provided for the accommodation of the Members.

This message was ordered by the Senate before the Chief Justice had taken his seat as Presiding Officer.¹

Thereupon, on motion of Mr. Elihu B. Washburne, of Illinois, the House resolved itself into a Committee of the Whole and with Mr. Washburne as chairman proceeded to the Senate.

In the Senate, at the hour of 1 o'clock, the President pro tempore² said: ³

According to the order of the Senate, the chair will be now vacated, that the Senate may be presided over by the Chief Justice of the United States for the trial of the impeachment.⁴

Thereupon the Chief Justice of the United States entered the Senate Chamber, escorted by Mr. Pomeroy, the chairman of the Senate committee heretofore appointed for that purpose, and took the chair.

The Sergeant-at-Arms made proclamation in the prescribed form; the managers on the part of the House of Representatives appeared, their presence was announced by the Sergeant-at-Arms, and they took their seats; the counsel for the President appeared and took seats, apparently without announcement, and then the Sergeant-at-Arms announced the presence of the House of Representatives; and the Committee of the Whole House, headed by Mr. E. B. Washburne, of Illinois, the chairman of the Committee of the Whole, and the Clerk of the House, entered the Chamber, and the Members were conducted to the seats assigned them.

A Senator who had not taken the oath was sworn, and then the Journal of the preceding sitting was read.⁵

2428. President Johnson's impeachment continued.

The answer of President Johnson to the articles of impeachment.

The answer of the President took up the articles one by one, denying some of the charges, admitting others, but denying that they set forth impeachable offenses and excepting to the sufficiency of others.

President Johnson's answer was signed by himself and counsel.

In his answer President Johnson referred to the Senate as a court.

The answer by President Johnson to the articles of impeachment was accompanied by two exhibits.

The answer of President Johnson to the articles of impeachment was read by his counsel.

After the disposition of a question relating to the competency of the Senate to proceed with the case,⁶ the counsel for the President filed his answer and by direction of the Chief Justice read it,⁷ beginning in form as follows:

Senate of the United States, sitting as a court of impeachment for the trial of Andrew Johnson,
President of the United States.

The answer of the said Andrew Johnson, President of the United States, to the articles of impeachment exhibited against him by the House of Representatives of the United States.

¹Globe, pp. 2068, 2069; Senate Journal, p. 334.

²B. F. Wade, of Ohio, President pro tempore.

³ Senate Journal, p. 334; Globe, p. 2069.

⁴Globe supplement, p. 11.

 $^{^5\,\}mathrm{Senate}$ Journal, pp. 828, 829; Globe pp. 11, 12.

⁶ See section 2060 of this volume.

⁷ Senate Journal, pp. 829–860; Globe supplement, pp. 12–22.

ANSWER TO ARTICLE I.

For answer to the first article he says: That * * * , etc.

The answer then proceeds, article by article:

ARTICLE I. The answer reviews at length the transactions with reference to Secretary Stanton and concludes with these specific denials:

And this respondent, proceeding to answer specifically each substantial allegation in the said first article, says: He denies that the said Stanton, on the 21st day of February, 1868 was lawfully in possession of the said office of Secretary for the Department of War. He denies that the said Stanton, on the day last mentioned, was lawfully entitled to hold the said office against the will of the President of the United States. He denies that the said order for the removal of the said Stanton was unlawfully issued. He denies that the said order was issued with intent to violate the act entitled "An act to regulate the tenure of certain civil offices." He denies that the said order was a violation of the last-mentioned act. He denies that the said order was a violation of the Constitution of the United States, or of any law thereof, or of his oath of office. He denies that the said order was issued with an intent to violate the Constitution of the United States or any law thereof, or this respondent's oath of office; and he respectfully, but earnestly, insists that not only was it issued by him in the performance of what he believed to be an imperative official duty, but in the performance of what this honorable court will consider was, in point of fact, an imperative official duty. And he denies that any and all substantive matters, in the said first article contained, in manner and form as the same are therein stated and set forth, do, by law, constitute a high misdemeanor in office, within the true intent and meaning of the Constitution of the United States.

ART. II. The answer in full is as follows:

And for answer to the second article, this respondent says that he admits he did issue and deliver to said Lorenzo Thomas the said writing set forth in said second article, bearing date at Washington, D. C., February 21, 1868, addressed to Bvt. Maj. Gen. Lorenzo Thomas, Adjutant-General United States Army, Washington, D. C., and he further admits that the same was so issued without the advice and consent of the Senate of the United States, then in session, but he denies that he thereby violated the Constitution of the United States, or any law thereof, or that he did thereby intend to violate the Constitution of the United States, or the provisions of any act of Congress; and this respondent refers to his answer to said first article for a full statement of the purposes and intentions with which said order was issued, and adopts the same as part of his answer to this article; and he further denies that there was then and there no vacancy in the said office of Secretary for the Department of War, or that he did then and there commit, or was guilty of a high misdemeanor in office, and this respondent maintains and will insist:

- 1. That at the date and delivery of said writing there was a vacancy existing in the office of Secretary for the Department of War.
- 2. That, notwithstanding the Senate of the United States was then in session, it was lawful and according to long and well established usage to empower and authorize the said Thomas to act as Secretary of War ad interim.
- 3. That, if the said act regulating the tenure of civil offices be held to be a valid law, no provision of the same was violated by the issuing of said order or by the designation of said Thomas to act as Secretary of War ad interim.

ART. III. The answer is as follows, in full:

And for answer to said third article this respondent says that he abides by his answer to said first and second articles, in so far as the same are responsive to the allegations contained in the said third article, and, without here again repeating the same answer, prays the same be taken as an answer to this third article as fully as if here again set out at length; and as to the new allegation contained in said third article, that this respondent did appoint the said Thomas to be Secretary for the Department of War ad interim, this respondent denies that he gave any other authority to said Thomas than such as appears in said written authority set out in said article, by which he authorized and empowered said

Thomas to act as Secretary for the Department of War ad interim; and he denies that the same amounts to an appointment and insists that it is only a designation of an officer of that Department to act temporarily as Secretary for the Department of War ad interim until an appointment should be made. But, whether the said written authority amounts to an appointment or to a temporary authority or designation, this respondent denies that in any sense he did thereby intend to violate the Constitution of the United States, or that he thereby intended to give the said order the character or effect of an appointment in the constitutional or legal sense of that term. He further denies that there was no vacancy in said office of Secretary for the Department of War existing at the date of said written authority.

ART. IV. In answer to Article IV the charge of conspiracy was denied, as also the charge that intimidation and threats were used in connection with the attempt to supersede Secretary Stanton by General Thomas; and in concluding, the following exception is taken:

This respondent doth here except to the sufficiency of the allegations contained in said fourth article, and states for ground of exception that it is not stated that there was any agreement between this respondent and the said Thomas, or any other person or persons, to use intimidation and threats, nor is there any allegation as to the nature of said intimidation and threats, or that there was any agreement to carry them into execution, or that any step was taken or agreed to be taken to carry them into execution, and that the allegation in said article that the intent of said conspiracy was to use intimidation and threats is wholly insufficient, inasmuch as it is not alleged that the said intent formed the basis or became a part of any agreement between the said alleged conspirators, and, furthermore, that there is no allegation of any conspiracy or agreement to use intimidation or threats.

ART. V. The answer in full, with an exception:

And for answer to the said fifth article this respondent denies that on the said 21st day of February, 1868, or at any other time or times in the same year before the said 2d day of March, 1868, or at any prior or subsequent time, at Washington aforesaid or at any other place, this respondent did unlawfully conspire with the said Thomas, or with any other person or persons, to prevent or hinder the execution of the said act entitled "An act regulating the tenure of certain civil offices," or that, in pursuance of said alleged conspiracy, he did unlawfully attempt to prevent the said Edwin M. Stanton from holding said office of Secretary for the Department of War, or that he did thereby commit, or that he was thereby guilty of, a high misdemeanor in office. Respondent, protesting that said Stanton was not then and there Secretary for the Department of War, begs leave to refer to his answer given to the fourth article and to his answer given to the first article as to his intent and purpose in issuing the orders for the removal of Mr. Stanton and the authority given to the said Thomas, and prays equal benefit therefrom as if the same were here again repeated and fully set forth.

And this respondent excepts to the sufficiency of the said fifth article, and states his ground for such exception, that it is not alleged by what means or by what agreement the said alleged conspiracy was formed or agreed to be carried out, or in what way the same was attempted to be carried out, or what were the acts done in pursuance thereof.

ART. VI. The answer in full:

And for answer to the said sixth article, this respondent denies that on the said 21st day of February, 1868, at Washington aforesaid, or at any other time or place, he did unlawfully conspire with the said Thomas by force to seize, take, or possess, the property of the United States in the Department of War, contrary to the provisions of the said acts referred to in the said article, or either of them, or with intent to violate either of them. Respondent, protesting that said Stanton was not then and there Secretary for the Department of War, not only denies the said conspiracy as charged, but also denies any unlawful intent in reference to the custody and charge of the property of the United States in the said Department of War, and again refers to his former answers for a full statement of his intent and purpose in the premises.

ART. VII. The answer in full:

And for answer to the said seventh article respondent denies that on the said 21st day of February, 1868, at Washington aforesaid, or at any other time and place, he did unlawfully conspire with the said Thomas with intent unlawfully to seize, take, or possess the property of the United States in the Department of War with intent to violate or disregard the said act in the said seventh article referred to, or that he did then and there commit a high misdemeanor in office. Respondent, protesting that the said Stanton was not then and there Secretary for the Department of War, again refers to his former answers, in so far as they are applicable, to show the intent with which he proceeded in the premises, and prays equal benefit therefrom, as if the same were here again fully repeated. Respondent further takes exception to the sufficiency of the allegations of this article as to the conspiracy alleged upon the same grounds as stated in the exception set forth in his answer to said article fourth.

ART. VIII. The answer in full:

And for answer to the said eighth article this respondent denies that on the 21st day of February, 1868, at Washington aforesaid, or at any other time and place, he did issue and deliver to the said Thomas the said letter of authority set forth in the said eighth article, with the intent unlawfully to control the disbursements of the money appropriated for the military service and for the Department of War. This respondent, protesting that there was a vacancy in the office of Secretary for the Department of War, admits that he did issue the said letter of authority, and he denies that the same was with any unlawful intent whatever, either to violate the Constitution of the United States or any act of Congress. On the contrary, this respondent again affirms that his sole intent was to vindicate his authority as President of the United States, and by peaceful means to bring the question of the right of the said Stanton to continue to hold the said office of Secretary of War to a final decision before the Supreme Court of the United States, as has been hereinbefore set forth; and he prays the same benefit from his answer in the premises as if the same were here again repeated at length.

ART. IX. In answer to Article IX the President reviews his transactions and conversations with General Emory, admits that he expressed an opinion that the law in question was unconstitutional, shows that he expressed the same opinion to the House of Representatives by message, and summarizes:

Respondent doth therefore deny that by the expression of such opinion he did commit or was guilty of a high misdemeanor in office; and this respondent doth further say that the said article nine lays no foundation whatever for the conclusion stated in the said article, that the respondent, by reason of the allegations therein contained, was guilty of a high misdemeanor in office.

ART. X. In answer to this article the President does not admit that the passages set forth as portions of addresses delivered by him correctly or justly present his speeches, and demands that, in case the matter set forth in the article is deemed to constitute a high misdemeanor cognizable by the court, proof shall be required to be made of the actual speech. He protests that he has not been unmindful of the high duties of his office, or the harmonies and courtesies proper between different branches of the Government, or that he has had designs against the rightful power and authority of Congress; and that in all his communications to the Congress and the public he has acted within and according to his right and privilege as a citizen and his right and duty as President. And in conclusion he says:

And this respondent says that neither the said tenth article nor any specification thereof nor any allegation therein contained touches or relates to any official act or doing of this respondent in the office of President of the United States or in the discharge of any of its constitutional or legal duties or responsibilities; but said article and the specifications and allegations thereof, wholly and in every part thereof, question only the discretion or propriety of freedom of opinion or freedom of speech, as exercised by this respondent as a citizen of the United States in his personal right and capacity, and without allegation or imputation against this respondent of the violation of any law of the United States touching or

relating to freedom of speech or its exercise by the citizens of the United States, or by this respondent as one of the said citizens or otherwise; and he denies that by reason of any matter in said article or its Specifications alleged he has said or done anything indecent or unbecoming in the Chief Magistrate of the United States, or that he has brought the high office of the President of the United States into contempt, ridicule, or disgrace, or that he has committed or has been guilty of a high misdemeanor in office.

ART. XI. The President denies specifically the charges, standing upon his right to freedom of speech as set forth in the answer to the preceding article, and concludes:

And this respondent, further answering the said eleventh article, denies that by means or reason of anything in said article alleged this respondent, as President of the United States, did, on the 21st day of February, 1868, or at any other day or time, commit, or that he was guilty of, a high misdemeanor in office.

And this respondent, further answering the said eleventh article, says that the same and the matters therein contained do not charge or allege the commission of any act whatever by this respondent, in his office of President of the United States, nor the omission by this respondent of any act of official obligation or duty in his office of President of the United States; nor does the said article nor the matters therein contained name, designate, describe, or define any act or mode or form of attempt, device, contrivance, or means, or of attempt at device, contrivance, or means, whereby this respondent can know or understand what act or mode or form of attempt, device, contrivance, or means, or of attempt at device, contrivance, or means, are imputed to or charged against this respondent, in his office of President of the United States, or intended so to be, or whereby this respondent can more fully or definitely make answer unto the said article than he hereby does.

Having answered article by article, the answer concludes:

And this respondent, in submitting to this honorable court this his answer to the articles of impeachment exhibited against him, respectfully reserves leave to amend and add to the same from time to time, as may become necessary or proper, and when and as such necessity and propriety shall appear.

Andrew Johnson.
Henry Stanbery,
B. R. Curtis,
Thomas A. R. Nelson,
William M. Evarts,
W. S. Groesbeck,
Of Counsel.

Attached to the answer were two exhibits, one being a message transmitted to the Senate by the President March 2, 1867, wherein the right of removal of officers was discussed; and the other a message of December 12, 1867, relating particularly to the case of Mr. Stanton.

2429. President Johnson's impeachment continued.

The answer of President Johnson to the articles of impeachment having been read, the question was taken on receiving it and placing it on file.

On the request of the managers the Senate ordered an attested copy of the answer of President Johnson to be sent to the House.

The answer of President Johnson having been received, the Senate gave the managers time to consult the House on a replication.

The reading of the answer being concluded, the Chief Justice said:1

Senators, you have heard the answer submitted by the counsel for the President of the United States. Those of you who are in favor of receiving and ordering this answer to be filed will say "aye," and those who are of the contrary opinion will say "no." [Having put the question.] It is so ordered; the answer is received and will be filed.

Thereupon Mr. Manager Boutwell presented a request that a copy of the answer be furnished to the House of Representatives. The Chief Justice put the question on the motion suggested by the request of the managers, and it was agreed to, the formal order being:

Ordered, That the managers have time to consult the House of Representatives on a replication, and that they be furnished with a copy of the answer of the respondent; and

Ordered, That the Secretary communicate to the House of Representatives an attested copy of the answer of the President to the articles of impeachment, together with a copy of the foregoing order.

2430. President Johnson's impeachment continued.

The answer of President Johnson having been read, his counsel offered a paper, signed by themselves, asking thirty days to prepare for trial.

The managers contended that President Johnson's request for time to prepare for the trial should have been signed by himself and under oath.

The managers opposed President Johnson's request for thirty days to prepare for trial, citing American and English precedents in argument.

The Senate granted to President Johnson a less time than his counsel asked to prepare for trial.

In granting to President Johnson time to prepare for trial the Senate intimated that there should be no delays after the beginning of the trial.

The Senate retired to consider President Johnson's application for time to prepare for trial.

The proceedings in the Senate consultation chamber during the Johnson trial appear in the Journal and Globe; but the debates are not given. (Footnote.)

Thereupon Mr. Evarts, in behalf of the respondent, submitted the following motion:²

To the Senate of the United States sitting as a court of impeachment:

And now, on this 23d day of March, in the year 1868, the counsel for the President of the United States, upon reading and filing his answer to the articles of impeachment exhibited against him, respectfully represent to this honorable court that after the replication shall have been filed to the said answer, the due and proper preparation of and for the trial of the cause will require, in the opinion and judgment of such counsel, that a period of not less than thirty days should be allowed to the President of the United States and his counsel for such preparation, and before the said trial should proceed.

HENRY STANBERY,
B. R. CURTIS,
THOMAS A. R. NELSON,
WILLIAM M. EVARTS,
W. S. GROESBECK,
Of Counsel.

¹ Senate Journal, p. 860; Globe supplement, pp. 22, 23.

² Senate Journal, pp. 860, 861; Globe supplement, pp. 23-28.

Mr. Manager Logan, on behalf of the House of Representatives, opposed the motion on the ground that the reasons given were not sufficient, and that the trial should be hastened because the respondent was continuing daily in the misuse of power for which he was arraigned. As to the precedents he said:

In the case of Judge Chase his application stated, in substance, that it was not in his power to obtain information respecting facts, alleged against him to have taken place in Philadelphia and Richmond, in time to prepare and put in his answer and proceed to trial before the 5th clay of March then next following; and further that he could not get his witnesses or counsel nor prepare his answer, at the same time disclaiming that this was done for delay. This application was sworn to by the respondent; he was given time, and the facts show that his answer was filed and his trial had, and he acquitted in five days' less time than he swore it would take him to prepare for trial.

In Judge Peck's case his application stated his difficulties in obtaining witnesses, the distance they lived from Washington, the time it would require them to travel from St. Louis to Washington, the necessity for copying and obtaining records; that four years had elapsed since the transpiring of the acts complained of against him. This application was also sworn to. If the learned counsel remember the trial of Queen Caroline before the Parliament of Great Britain, when time was granted for the procurement of evidence the learned attorney-general then and there protested against this granting of time becoming a precedent for any future trial, this application being granted merely through courtesy to the Queen, when witnesses were deemed absolutely necessary to protect, if possible, her reputation. This application differs in form and substance from any that our attention has been directed to, made by the counsel, signed by themselves, and sworn to by no one.

Mr. Logan in conclusion said:

I presume no man will doubt that if an application of this kind were made to a court at law the inquiry would be: "Have you issued your subpoenas; have you attempted to get your witnesses; have you attempted to make any preparation to try the cause?" And if the counsel would answer that they had made no preparation whatever; that they had issued no subpoenas; had made no attempt to procure witnesses or get ready for the trial of the cause, but merely desired time for thought and reflection, the application would certainly be denied. And against the granting of this, not made upon the oath of any person, not signed by the President, and merely intended for the benefit of counsel, we, the managers, in the name of the House of Representatives and the whole people of this Republic, do most solemnly protest.

Later Mr. Manager Bingham urged:

I submit that a question of this magnitude has never been decided upon a mere presentation of a statement of counsel, in this country or in any country. To speak more plainly, a motion for continuance arising on a question of this sort, I venture to say, has never been decided affirmatively upon such an issue on a mere statement of counsel. If Andrew Johnson, the accused at this bar, has witnesses that were not within the process of this court up to this day, but whose attendance he can hope to procure if time be allowed him, he can make affidavit before this tribunal that they are material and set forth in his affidavit what he expects to prove by them. I concede that upon such a showing there would be something upon which the Senate might properly act.

Mr. Evarts, of counsel for the respondent, said:

In our estimate of the course of this proceeding before this honorable court we have not yet arrived at a time when it was the duty of counsel or was at the charge of the accused to know or consider what the issues were upon which he was to prepare on his side or expect on the other the production of proofs. Beyond that, we feel no occasion to present by affidavit to this honorable court a matter so completely within its cognizance that our time to plead was fixed so as to offer us but eight working days for that duty of counsel. * * *

It would seem to me that we are placed thus far in the attitude of a defendant in a civil or in a public prosecution who upon the issue joined desires time to prepare for trial. The ordinary course in such a case is that as matter of right, as matter of absolute and universal custom, one is not required or expected to give any cause of actual obstruction and difficulty in reference to a continuance to what is the term of the court, doubtless in most cases to occur within a brief period after the issue is joined. This court having no such arrangement and no such possible arrangement of its affairs in advance, we are obliged at each stage of regular proceeding to ask your attention as to what you will provide and consider in the particular case is, according to the general nature of the procedure and the understood attitude of both parties to it, a just and reasonable proposition to be made by us as to the time that should be allowed for the preparation in all respects for this trial after the issue shall have been joined.

At the conclusion of the discussion between the managers and the counsel for the respondent Mr. John B. Henderson, a Senator from Missouri, moved that the application of counsel for the respondent be postponed until after the filing of the replication. This motion was disagreed to, yeas 25, nays 28.

The question then recurring on granting the application of counsel for the respondent, it was denied, yeas 12, nays 41.

Thereupon Mr. Evarts, counsel for the respondent, submitted the following:

The counsel for the President now move that there be allowed for the preparation of the President of the United States for the trial, after the replication shall be filed and before the trial shall be required to proceed, such reasonable time as shall now be fixed by the Senate.

Pending its consideration the Senate adjourned until the next day, March 24. When it convened on that day ¹ for the trial the replication of the House of Representatives was filed, and then the consideration of the application for time was resumed. In answer to the request of counsel for the respondent, Mr. Reverdy Johnson, of Maryland, a Senator, proposed the following:

Ordered, That the Senate proceed to the trial of the President under the articles of impeachment exhibited against him at the expiration of ten days from this day, unless for causes shown to the contrary.

To this Mr. Charles Sumner, of Massachusetts, a Senator, proposed an amendment, which he subsequently withdrew, striking out all after the word ordered and inserting:

Now that replication has been filed, the Senate, adhering to its rule already adopted, will proceed with the trial from day to day (Sundays excepted) unless otherwise ordered on reason shown.

Pending consideration, the Senate voted, yeas 29, nays 23, to retire for consultation, ² and being called to order in their conference chamber, Mr. Johnson modified his order to read as follows:

Ordered, That the Senate will commence the trial of the President upon the articles of impeachment exhibited against him on Thursday, the 2d of April.

On motion of Mr. Sumner, and by a vote of yeas 28, nays 24, this order was amended by striking out "Thursday, the 2d of April," and inserting "Monday, the 30th of March instant."

A proposition to suspend consideration of the subject until the managers had opened their case and submitted their evidence, was presented by Mr. George H. Williams, of Oregon, but was disagreed to, yeas 9, nays 42.

On motion of Mr. Thomas A. Hendricks, of Indiana, and without division, the order proposed by Mr. Johnson was further amended by adding the words—

¹Senate Journal, pp. 862–864; Globe supplement, pp. 28, 29.

² The proceedings in the consultation chamber appear both in the Journal and Globe. (Globe Journal, p. 863; Globe supplement, p. 28.)

and proceed therein with all convenient dispatch, under the rules of the Senate sitting upon the trial of an impeachment.

The order as amended was then agreed to; and the Senate having returned to their Chamber, the Chief Justice informed the counsel for the respondent that the Senate had agreed upon an order in response to their application, as follows:

Ordered, That the Senate will commence the trial of the President upon the articles of impeachment exhibited against him on Monday, the 30th of March instant, and proceed therein with all convenient dispatch, under the rules of the Senate sitting upon the trial of an impeachment.

2431. President Johnson's impeachment continued.

The form of President Johnson's answer was commented on during preparation of the replication in the House.

Argument as to whether or not a demurrer is permissible in an impeachment case.

Comment on the use of the phrase "all the people" in the pleadings in an impeachment case.

Form of resolutions adopting the replication in the Johnson trial and directing its presentation in the Senate.

In the House, on March 23,¹ Mr. George S. Boutwell, of Massachusetts, from the managers, reported a form of replication. In reporting it he said:

The attention of the managers was called to the peculiar form of the answer filed by the President. To most of the articles, however, he makes answer, in substance, that he is not guilty, although the form of the answer is different from that which has generally been employed in similar cases. In respect to some of the articles the answer probably amounts to a demurrer merely. But upon the whole the managers have chosen to treat the answer of the President to each and every article as a plea of the general issue of not guilty. And the managers are of opinion that no advantage can be taken, as against the House of Representatives, from the form of replication which has been reported by the managers.

Mr. George W. Woodward, of Pennsylvania, criticising the demurrer, said:

If I understood the answer of the President to the eleventh article of impeachment, it amounts to a demurrer to that article. It denies that there is any impeachable offense charged in the eleventh article. My own private opinion is that the demurrer or answer is very conclusive. I do not think there is any impeachable offense charged in the eleventh article.

The answer of the President putting that point in issue, which is a legal question and amounts to a demurrer, there should be a special replication to that part of the answer which relates to the eleventh article, or a formal rejoinder in demurrer. This general replication does not join an issue upon that article at all; it is what might be called a departure in pleading. Here is a demurrer to the eleventh article which denies that any impeachable offense is charged in it. The managers do not aver in the replication that the eleventh article charges any impeachable offense, and therefore there is no issue upon the record upon that article.

To this Mr. John A. Bingham, of Ohio, replied:

Now, as to the answer of the President, I beg leave to call the attention of the House and the attention of the gentleman from Pennsylvania [Mr. Woodward] to the fact that while it does contain much that is argumentative, much that may be called demurrer, which is never allowed at all in an impeachment case, which was never introduced into the proceedings of an impeachment case—for there never was a demurrer entertained by the Senate in an impeachment case, none ever entertained in the House of Lords of England; there is no such note of record; it does not lie; special pleading is unknown to the whole proceeding—yet this answer of the President to the eleventh article of impeachment, in its

¹ House Journal, pp. 564, 566; Globe, pp. 2073–2075, 2078–2081.

last clause, does expressly deny, and is therefore simply a plea of not guilty—it expressly denies that he committed a crime. As to form, it is nothing; substance is everything.

Mr. Fernando Wood, of New York, objected to the language of the replication, in that it professed to reply in the name of all the people of the United States; but Mr. Benjamin F. Butler, of Massachusetts, replied that this form, using the words "all the people" had been in use five hundred years, and had been questioned only once, in the days of Charles I.

The replication was agreed to on March 24 by a vote of yeas 116, nays 36, whereby the House—

Resolved, That the House hereby adopts the replication to the answer of the President, as now submitted by the managers.

Thereupon, on motion of Mr. Boutwell, the following was agreed to:

Resolved, That a message be sent to the Senate by the Clerk of the House informing the Senate that the House of Representatives has adopted a replication to the answer of the President of the United States on the articles of impeachment exhibited against him, and that the same will be presented to the Senate by the managers on the part of the House.

2432. President Johnson's impeachment continued.

The replication of the House to President Johnson's answer to the articles of impeachment.

The replication in the Johnson trial was signed by the Speaker and attested by the Clerk.

The Senate ordered that an authenticated copy of the replication to President Johnson's answer be furnished to counsel of the respondent.

On March $24^{\,1}$ in the Senate sitting for the trial, the message authorized by the resolution was received, and immediately upon its being laid before the Senate, Mr. Manager Boutwell presented the replication:

IN THE HOUSE OF REPRESENTATIVES, UNITED STATES, March 24, 1868.

Replication by the House of Representatives of the United States to the answer of Andrew Johnson,
President of the United States, to the articles of impeachment exhibited against him by the House
of Representatives.

The House of Representatives of the United States have considered the several answers of Andrew Johnson, President of the United States, to the several articles of impeachment against him by them exhibited in the name of themselves and of all the people of the United States, and reserving to themselves all advantage of exception to the insufficiency of his answer to each and all of the several article of impeachment exhibited against said Andrew Johnson, President of the United States, do deny each and every averment in said several answers, or either of them, which denies or traverses the acts, intents, crimes, or misdemeanors charged against said Andrew Johnson in the said articles of impeachment, or either of them; and for replication to said answer do say that said Andrew Johnson, President of the United States, is guilty of the high crimes and misdemeanors mentioned in said articles, and that the House of Representatives are ready to prove the same.

Schuyler Colfax, Speaker of the House of Representatives. Edward McPherson, Clerk of the House of Representatives.

¹ Senate Journal, p. 862; Globe Supplement, p. 28.

Thereupon, on motion of Mr. Reverdy Johnson, of Maryland, a Senator, it was:

Ordered, That the Secretary of the Senate be directed to furnish the counsel of the President an authenticated copy of the replication of the House of Representatives to the answer of the President to the articles of impeachment exhibited against him by the House of Representatives.

2433. President Johnson's impeachment continued.

The opening addresses of managers and counsel in the Johnson trial. The opening addresses in the Johnson trial discussed constitutional questions and outlined evidence.

Definition of impeachable offenses by counsel for President Johnson. By consent the managers in the Johnson trial reserved the right to supply omissions in evidence after they had closed their testimony.

On motion of counsel for President Johnson, the Senate adjourned over to permit time for preparation of testimony for the defense.

On March 30,¹ the day set for the commencement of the trial, the Senate assembled and the proceedings began with the usual proclamation and ceremonies. The journal having been read, the Chief Justice said:

Gentlemen, managers of the House of Representatives, you will now proceed in support of the articles of impeachment.

Mr. Manager Benjamin F. Butler then opened the case for the managers, speaking nearly three hours, and touching on the following topics: (a) What are impeachable offenses, antagonizing the view that only indictable offenses are impeachable; (b) whether or not the Senate sat as a court, taking the view that it did not; (c) and a review of the issues presented by the articles and the reply, with arguments in support of the articles. Mr. Butler also presented a brief of the authorities upon the law of impeachable crimes and misdemeanors, prepared by Mr. William Lawrence, of Ohio, and revised by himself.²

Then the managers proceeded with the testimony, Mr. Manager James F. Wilson proceeding first with certain documentary evidence. The presentation of testimony, documentary and oral, continued until Saturday, April 4,3 when it was announced on behalf of the managers that the case on behalf of the House of Representatives was substantially closed, but that in looking over their testimony they might find some omissions which they might wish to supply, and therefore they did not wish to be precluded from offering them. The counsel for the President announced that they took no exception to this reservation.

Thereupon Mr. Benjamin R. Curtis, of Massachusetts, of counsel for the President, announced that they desired time for preparation of their testimony, and therefore he would move that "when this court adjourns, it adjourn to Thursday next." 4

Thereupon Mr. John Conness, a Senator from California, moved that the Senate sitting for the trial should adjourn until Wednesday. Mr. Reverdy Johnson, a

¹Senate Journal, p. 865; Globe supplement, pp. 29-53.

² Globe supplement, pp. 41-50.

³ Senate Journal, pp. 882, 893; Globe supplement, p. 121.

⁴It will be observed that this was merely an adjournment of the Senate sitting for the trial and therefore not governed by the rule of the Constitution. The Senate itself in its legislative capacity was in session during intervening days.

Senator from Maryland, moved an amendment substituting Thursday for Wednesday, and it was agreed to, yeas 37, nays 10. Then the motion as amended was agreed to.

At the reconvening on April 9, the managers occupied a brief time in presenting additional evidence, after which Mr. Benj. R. Curtis, of counsel for the President, opened the defense, speaking the remainder of this day and concluding on April $10.^1$ He first reviewed the issues presented by the articles and the answer, and then argued (a) that impeachable offenses were "only high criminal offenses against the United States, made so by some law of the United States existing when the acts complained of were done;" and (b) that the Senate, in trying an impeachment, was a court.

At the conclusion of Mr. Curtis's opening the presentation of testimony on behalf of the respondent was begun, and proceeded from day to day until April 18,² when Mr. William M. Evarts, of counsel, announced that the defense had concluded its testimony, but would reserve the privilege to offer proof that might have been overlooked because of the illness of Mr. Stanbery, to whom had been intrusted the examination of witnesses.

2434. President Johnson's impeachment continued.

The order of the final arguments in the trial of President Johnson.

Disorder occurring in the galleries during the Johnson trial, they were cleared.

On April 20³ the managers introduced certain verbal and documentary evidence, after which, on April 23, the Senate, after consideration, agreed to ⁴ the following:

Ordered, That as many of the managers as desire to do so be permitted to file arguments or to address the Senate orally; but the conclusion of the oral argument shall be by one manager, as provided in the twenty-first rule.

Thereupon Mr. John A. Logan, on behalf of the managers, and in accordance with the above rule, filed an argument.⁵ On the same day Mr. Manager George S. Boutwell began an oral argument, which he concluded on the succeeding day.⁶ Thereupon Mr. Thomas A. R. Nelson, of counsel for the respondent, began an argument in defense, which he concluded on the succeeding day, April 24.⁷

On April 25,8 after the consideration of business relative to course of procedure in passing judgment, Mr. William S. Groesbeck, counsel for the President, continued argument for the defense, concluding on that day.

On Monday, April 27, Mr. Manager Thaddeus Stevens argued for the managers.⁹ He was followed on the same day by Mr. Manager Thomas Williams, who concluded on the next day.¹⁰

¹Senate Journal, p. 885; Globe supplement, pp. 123–136.

² Senate Journal, p. 914; Globe supplement, p. 238.

³ Senate Journal, p. 914; Globe supplement, p. 239.

 $^{^4\,\}mathrm{Senate}$ Journal, p. 921; Globe supplement, p. 251.

⁵ Journal, p. 921; Globe supplement, pp. 251–268.

⁶ Journal, p. 921; Globe supplement, pp. 268–286.

⁷ Journal, p. 922; Globe supplement, pp. 286-310.

⁸ Senate Journal, p. 924; Globe supplement, pp. 310-320.

⁹ Senate Journal, p. 925; Globe supplement, pp. 320-324.

¹⁰ Senate Journal, pp. 925, 926; Globe supplement, pp. 324–335.

At the conclusion of Mr. Williams's address, Mr. Manager Benjamin F. Butler asked and obtained leave of the Senate,¹ by unanimous consent, to make "a short narration of facts, made necessary by what fell from Mr. Nelson, of counsel for the President, in his speech of Friday last." Mr. Nelson, also by unanimous consent, was permitted to reply.

On April 28,2 Mr. William M. Evarts, counsel for the respondent, then began argument for the defense, which he continued daily until May 1, when he concluded. On the same day Mr. Henry Stanbery began the concluding argument for the defense, finishing on May 2.3

On May 4, 5, and 6,4 Mr. Manager John A. Bingham made the concluding argument for the managers.

At the conclusion of Mr. Bingham's address ⁵ there were in the gallery applause and hisses, whereupon, on motion of Mr. James W. Grimes, of Iowa, it was—

Ordered, That the Sergeant-at-Arms be directed to clear the galleries.

In obedience to this order the galleries were completely cleared. Later the galleries were ordered by the Senate to be reopened.

2435. President Johnson's impeachment continued.

Being excluded from the Johnson trial by a secret session, the House returned to its Hall and determined to attend again when informed that the Senate was ready to receive them.

Shortly after, on motion of Mr. George F. Edmunds, of Vermont, the doors of the Senate were closed for deliberation. The House of Representatives consequently returned to their Chamber,⁶ and, the Speaker having resumed the chair, a question was raised as to the course of procedure.

The Speaker 7 had read the rule under which the House was acting:

Resolved, That on the days when the Senate shall sit for the trial of the President upon the articles of impeachment exhibited by the House of Representatives the House, in Committee of the Whole, will attend with the managers at the bar of the Senate at the hour named for the commencement of the proceedings.

and then ruled:

The Chair rules that under this resolution, the Senate having gone into secret session in their own Chamber for deliberation, and it being impossible for the managers and the House as in the Committee of the Whole to attend at the bar of the Senate, it is the duty of the House to return to its Hall, and here, as the House of Representatives, to transact business while waiting for any message from the Senate after the doors of that body have been reopened. * * * The Chair took some time to examine this resolution, and after consultation with others who are excellent parliamentarians he has no doubt of the fact in his own mind that while the Senate is engaged in secret deliberation for one or four and twenty hours it could not be expected or required of the House to remain in the Senate corridors, and the Speaker, as representing the House, could not consent to it without the direct order of the House. The Chair therefore thinks, the order having been made before the House proceeded to the Senate,

¹Senate Journal, p. 926; Globe supplement, pp. 335, 336.

² Senate Journal, pp. 926–930; Globe supplement, pp. 337–368.

³ Senate Journal, p. 930; Globe supplement, pp. 368-379.

⁴ Senate Journal, pp. 931, 932; Globe supplement, pp. 379-406.

⁵ Senate Journal, pp. 932, 933; Globe supplement, pp. 406, 407.

 $^{^6}$ House Journal, pp. 655, 656; Globe, pp. 2365, 2368.

⁷ Schuyler Colfax, of Indiana, Speaker.

that when the House returns business should be transacted; and the Senate having excluded the House from its Chamber, as it has a right to do under its rules, the House must therefore return to the Hall and await a message from the Senate.

Thereupon the Speaker recognized Mr. Elihu B. Washburne, chairman of the Committee of the Whole, who reported:

The Committee of the Whole have, according to order, attended the managers to the bar of the Senate, sitting as a court of impeachment for the trial of Andrew Johnson; and the argument having been closed and the Senate having ordered its doors to be shut for deliberation, the committee thereupon returned with the managers to the Hall of the House.

The Speaker appears to have sent a letter to the Senate asking that the House might be notified when the doors should be opened. This must have been done informally by the Speaker, but the Chief Justice laid it before the Senate, whereupon it was—¹

Ordered, That the Secretary inform the House of Representatives that the Senate, sitting for the trial of the President upon articles of impeachment, will notify the House when it is ready to receive them at the bar.

2436. President Johnson's impeachment continued.

The Senate declined to make public its debates in secret session on the final judgment in the Johnson trial.

After the doors of the Senate had been closed,² it resumed consideration of this resolution, which had been proposed by Mr. George F. Edmunds, of Vermont, on April 24:

Ordered, That after the arguments shall be concluded, and when the doors shall be closed for deliberation upon the final question the official reporters of the Senate shall take down the debates upon the final question, to be reported in the proceedings.

This order, with pending amendments relating to restriction of debate, was laid on the table by a vote of 28 yeas, 20 nays.³

2437. President Johnson's impeachment continued.

The Senate adopted an order governing its deliberations and voting on the final question in the Johnson trial.

Deliberation having been had in secret session, the Senate voted on the articles of impeachment without debate.

While the deliberations on the final question in the Johnson trial were secret, the Senators were permitted to file written opinions.

Thereupon the Senate proceeded to consider ⁴ a proposition originally submitted by Mr. Charles Sumner, of Massachusetts, on April 24:

Ordered, That the Senate, sitting for the trial of Andrew Johnson, President of the United States, will proceed to vote on the several articles of impeachment at 12 o'clock on the day after the close of the arguments.

After propositions to amend had been considered, the order was laid on the table, and then, after further consideration, the Senate, without division, agreed to the following, proposed by Mr. Justin S. Morrill, of Vermont:

¹Senate Journal, p. 933; Globe supplement, p. 408.

² Senate Journal, p. 933; Globe supplement, pp. 294, 407.

³While the debates were not taken down, a statement of what was done in the secret session appears in the Journal and Globe. (Senate Journal, pp. 933–940; Globe supplement, pp. 407–410.)

⁴Senate Journal, pp. 934–937; Globe supplement, pp. 408, 409.

Ordered, That when the Senate adjourns to-day, it adjourn to meet on Monday next, at 11 o'clock a.m., for the purpose of deliberation, under the rules of the Senate, sitting on the trial of impeachments, and that on Tuesday next following, at 12 o'clock m., the Senate shall proceed to vote without debate on the several articles of impeachment; and each Senator shall be permitted to file within two days after the vote shall have been so taken his written opinion, to be printed with the proceedings.

2438. President Johnson's impeachment continued.

Having disagreed as to the form of final question in the Johnson trial, the Senate left it to the Chief Justice.

On May 7 ¹ the Senate proceeded to the consideration of the form in which the question should be put, and various propositions were offered, as follows, for amendment to the rules:

By Mr. Charles Sumner, of Massachusetts:

Rule 23. In taking the votes of the Senate on the articles of impeachment, the Presiding Officer shall call each Senator by his name, and upon each article propose the following question, in the manner following: "Mr. ———, how say you, is the respondent, ———, guilty or not guilty, as charged in the ——— article of impeachment?" whereupon each Senator shall rise in his place and answer "guilty" or "not guilty."

At the suggestion of Mr. Roscoe Conkling, of New York, Mr. Sumner modified this by striking out the words "as charged in" and inserting "of a high crime or misdemeanor (as the case may be) within."

Mr. Charles R. Buckalew, of Pennsylvania, proposed to amend by changing the form of question to the following, which Mr. Sumner accepted:

Mr. ——, how say you, is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of a high crime or misdemeanor (as the case may be) as charged in the article of impeachment?

Mr. John Conness, of California, proposed to amend by substituting for the latter portion of Mr. Sumner's proposition, the following:

Each of the articles Nos. 1, 2, 3, 4, 5, 7, 8, 9, 10, and 11 propose the following question in the manner following: Mr. Senator, how say you, is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of a high crime or misdemeanor as charged in this article? And upon each of the articles Nos. 4 and 6 he shall propose the following question: Mr. Senator, how say you, is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of a high crime charged in this article? Whereupon each Senator shall rise in his place and answer "guilty" or "not guilty."

After voting on an amendment proposed by Mr. Thomas A. Hendricks, of Indiana, which provided for voting separately on the several clauses of the eleventh article, the whole subject was, on motion of Mr. Sumner, laid on the table by a vote of, yeas 24, nays 11.

Thereupon, and as appeared later, after an understanding that the Chief Justice should propose a rule, the Senate adjourned to Monday, May 11.

2439. President Johnson's impeachment continued.

Views of the Chief Justice on form of final question in the Johnson trial and on division of the articles for voting.

In the Johnson trial the Senate adopted the form of final question and method of voting suggested by the Chief Justice.

¹Senate Journal, pp. 937, 938; Globe supplement, p. 409.

On May 11^{1} the Chief Justice presented the following views, which were ordered to be entered on the Journal:

Senators: In conformity with what seemed to be the general wish of the Senate when it adjourned last Thursday, the Chief Justice, in taking the vote on the articles of impeachment, will adopt the mode sanctioned by the practice in the cases of Chase, Peck, and Humphreys.

He will direct the Secretary to read the several articles successively, and after the reading of each article will put the question of guilty or not guilty to each Senator, rising in his place, in the form used in the case of Judge Chase:

"Mr. Senator ——, how say you, is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of a high misdemeanor, as charged in this article?"

In putting the question on articles 4 and 6, each of which charges a crime, the word "crime" will be substituted for the word "misdemeanor."

The Chief Justice has carefully considered the suggestion of the Senator from Indiana [Mr. Hendricks], which appeared to meet the approval of the Senate, that in taking the vote on the eleventh article, the question should be put on each clause, and has found himself unable to divide the article as suggested. The article charges several facts, but they are so connected that they make but one allegation, and they are charged as constituting one misdemeanor.

The first fact charged is, in substance, that the President publicly declared in August, 1866, that the Thirty-ninth Congress was a Congress of only part of the States and not a constitutional Congress, intending thereby to deny its constitutional competency to enact laws or propose amendments of the Constitution; and this charge seems to have been made as introductory, and as qualifying that which follows, namely, that the President, in pursuance of this declaration, attempted to prevent the execution of the tenure of office act by contriving and attempting to contrive means to prevent Mr. Stanton from resuming the functions of Secretary of War after the refusal of the Senate to concur in his suspension, and also by contriving and attempting to contrive means to prevent the execution of the appropriation act of March 2, 1867, and also to prevent the execution of the rebel States governments act of the same date.

The gravamen of the article seems to be that the President attempted to defeat the execution of the tenure of office act, and that he did this in pursuance of a declaration which was intended to deny the constitutional competency of Congress to enact laws or propose constitutional amendments, and by contriving means to prevent Mr. Stanton from resuming his office of Secretary, and also to prevent the execution of the appropriation act and the rebel States governments act.

The single substantive matter charged is the attempt to prevent the execution of the tenure of office act; and the other facts are alleged either as introductory and exhibiting this general purpose, or as showing the means contrived in furtherance of that attempt.

This single matter, connected with the other matters previously and subsequently alleged, is charged as the high misdemeanor of which the President is alleged to have been guilty.

The general question, guilty or not guilty of a high misdemeanor as charged, seems fully to cover the whole charge, and will be put as to this article as well as to the others, unless the Senate direct some mode of division.

In the tenth article the division suggested by the Senator from New York [Mr. Conkling] may be more easily made. It contains a general allegation, to the effect that on the 18th of August, and on other days, the President, with intent to set aside the rightful authority of Congress and bring it into contempt, delivered certain scandalous harangues, and therein uttered loud threats and bitter menaces against Congress and the laws of the United States enacted by Congress, thereby bringing the office of President into disgrace, to the great scandal of all good citizens, and sets forth, in three distinct specifications, the harangues, threats, and menaces complained of.

In respect to this article, if the Senate sees fit so to direct, the question of guilty or not guilty of the facts charged may be taken in respect to the several specifications, and the question of guilty or not guilty of a high misdemeanor, as charged in the article, can also be taken.

The Chief Justice, however, sees no objection to putting the general question on this article in the same manner as on the others; for, whether the particular questions be put on the specifications

¹ Senate Journal, pp. 938-940; Globe supplement, pp. 409, 410.

or not, the answer to the final question must be determined by the judgment of the Senate, whether or not the facts alleged in the specifications have been sufficiently proved, and whether, if sufficiently proved, they amount to a high misdemeanor within the meaning of the Constitution.

On the whole, therefore, the Chief Justice thinks that the better practice will be to put the general question on each article without attempting to make any subdivision, and will pursue this course if no objection is made. He will, however, be pleased to conform to such directions as the Senate may see fit to give in this respect.

On motion of Mr. Charles Sumner, of Massachusetts, it was

Ordered, That the questions be put as proposed by the presiding officer of the Senate, and each Senator shall rise in his place and answer "guilty" or "not guilty" only.

2440. President Johnson's impeachment continued.

Form of voting in the Senate on the final question in the trial of President Johnson.

In the Johnson trial the Senate voted on the articles in an order different from the numerical order.

By direction of the Senate the Chief Justice announced the result after the vote on each article in the Johnson trial.

The House in Committee of the Whole attended in the Senate during the voting on the final question in the Johnson trial.

On May 12,¹ the day set for voting on the articles of impeachment, the illness of a Senator caused the voting to be postponed to May 16. On that day the Chief Justice took his seat at the hour of 12 o'clock, the usual proclamation was made by the Sergeant-at-Arms, etc., and then, on motion of Mr. George F. Edmunds, of Vermont, it was—

Ordered, That the Secretary be directed to inform the House of Representatives that the Senate, sitting for the trial of the President upon articles of impeachment, is now ready to receive them in the Senate Chamber.

Soon thereafter the Sergeant-at-Arms announced the presence of the House of Representatives at the bar, and the Members of the House of Representatives, as in Committee of the Whole, preceded by Mr. E. B. Washburne, chairman of that committee, and accompanied by the Speaker and Clerk, appeared and were conducted to the seats provided for them.

Thereupon, by a vote of yeas 34, nays 19, the Senate agreed to the following order, offered by Mr. George H. Williams, of Oregon:

Ordered, That the Chief Justice, in directing the Secretary to read the several articles of impeachment, shall direct him to read the eleventh article first, and the question shall then be taken on that article, and thereafter the other ten successively as they stand.

Then, on motion of Mr. Edmunds, it was 2—

Ordered, That the Senate now proceed to vote upon the articles, according to the rules of the Senate.

Thereupon the Chief Justice directed the reading of the eleventh article, which being done, the following procedure occurred:

The CHIEF JUSTICE. Call the roll.

¹ Senate Journal, pp. 941, 942; Globe supplement, p. 411.

² Senate Journal, pp. 942-945; Globe supplement, p. 411.

The Chief Clerk called the name of Mr. Anthony.

Mr. Anthony rose in his place.

The CHIEF JUSTICE. Mr. Senator Anthony, how say you? Is the respondent, Andrew Johnson, President of the United States, guilty or not guilty of a high misdemeanor, as charged in this article?

Mr. Anthony. Guilty.

[This form was continued in regard to each Senator as the roll was called alphabetically, each rising in his place as his name was called and answering "guilty" or "not guilty." When the name of Mr. Grimes was called, he being very feeble, the Chief Justice said he might remain seated. He, however, with the assistance of friends, rose and answered. The Chief Justice also suggested to Mr. Howard that he might answer in his seat, but he preferred to rise.]

The Chief Justice did not vote.

Immediately upon the vote being completed, a motion for a recess was made and disagreed to, whereupon a motion was made to adjourn. Mr. Reverdy Johnson, of Maryland, asked if it was in order for the Senate to adjourn while pronouncing judgment.

The Chief Justice said:

The precedents seem to be, except in one case, and that is the case of Humphreys, that the announcement be not made by the presiding officer until after the vote has been taken on all the articles. The Chair will, however, take the direction of the Senate. If they desire the announcement of the vote which has been taken to be now made he will make it.

It being the general opinion of the Senate that the announcement be made, the Chief Justice said:

Upon this article thirty-five Senators vote "guilty," and nineteen Senators vote "not guilty." Two-thirds not having pronounced guilty, the President is, therefore, acquitted upon this article.

2441. President Johnson's impeachment continued.

The Senate, overruling the Chief Justice, decided that a motion to adjourn over was in order during the voting on the articles in the Johnson trial.

After voting on one article in the Johnson trial, the Senate adjourned to a day fixed.

Thereupon the question recurred on the motion, made by Mr. George H. Williams, of Oregon, that the Senate adjourn until Tuesday, the 26th instant.

Mr. Thomas A. Hendricks, of Indiana, made the point of order that as the Senate was engaged in executing an order, any motion except the simple motion to adjourn was not in order.

The Chief Justice ruled 1 —

A motion that when the Senate adjourns it adjourn to meet at a certain day could not now be entertained, because the Senate is in process of executing an order. A motion to adjourn to a certain day seems to the Chair to come under the same rule. He will, therefore, decide the motion not to be in order.

Mr. John Conness, of California, having appealed, the decision of the Chair was overruled, yeas 24, nays 30.2

¹ Globe supplement, p. 412.

²On May 26, on the same question, the Chief Justice decided as he had first decided, and was again overruled, 35 to 18. (Globe supplement, p. 414.)

Thereupon the question recurred on the motion of Mr. Williams, which was agreed to, yeas 32, nays 21, after several amendments proposing a different day had been disagreed to.

2442. President Johnson's impeachment continued.

The Senate, overruling the Chief Justice, held in order a motion to rescind its rule governing the voting on the articles of impeachment in the Johnson trial.

The Senate rescinded its order prescribing the method of voting on the articles in the Johnson trial, although it was partially executed.

On May 26,¹ after the Senate had assembled in the usual form, and after the House of Representatives, informed by message, had attended, Mr. George H. Williams, of Oregon, offered the following:

Resolved, That the resolution heretofore adopted as to the order of reading and voting upon the articles of impeachment be rescinded.

Mr. Charles R. Buckalew, of Pennsylvania, having objected, the Chief Justice held:

The Chief Justice is under the impression that it changes the rule, and he will state the case to the Senate, in order that the Senate may correct him if he is wrong. The twenty-second rule of the Senate provides that—

"On the final question, whether the impeachment is sustained, the year and nays shall be taken on each article of impeachment separately."

That necessarily implies that they be taken in their order unless it is otherwise prescribed by the Senate. Subsequently the framing of a question to be addressed to the Senators was left to the Chief Justice, and he stated the views which seemed to him proper to be observed. In the course of that statement he said that "he will direct the Secretary to read the articles successively, and after the reading of each article will put the question of guilty or not guilty to each Senator, rising in his place, in the form used in the case of Judge Chase," and then stated the form.

After the statement was made-

"Mr. Sumner submitted the following order; which was considered by unanimous consent, and agreed to:

"Ordered, That the questions be put as proposed by the presiding officer of the Senate, and each Senator shall rise in his place and answer guilty or not guilty, only."

That was the order under which the Senate was acting until on the 16th of May the Senate adopted the following order moved by the Senator from Oregon [Mr. Williams]:

"Ordered, That the Chief Justice, in directing the Secretary to read the several articles of impeachment, shall direct him to read the eleventh article first, and the question shall then be taken on that article, and thereafter the other ten successively as they stand."

This order changing the rule was in order on the 16th of May, having been voted some days before. Subsequently, after the House had been notified that the Senate was ready to receive them, the Senator from Vermont [Mr. Edmunds] moved—

"That the Senate do now proceed to vote upon the articles according to the order of the Senate just adopted."

The Senate proceeded to vote upon the eleventh article, and after that adjourned until to-day. The present motion is to change the whole of these orders, for changing only the order of the 16th will not reach the effect intended. It must change, also, the order adopted on the motion of the Senator from Massachusetts [Mr. Sumner], and also, as the Chief Justice conceives, the rule. He is of opinion, therefore, that a single objection will take it over this day, but will submit the question directly to the Senate without undertaking to decide it, as it is a matter which relates especially to the present order of business.

¹Senate Journal, p. 946; Globe supplement, p. 413.

The Senate, by a vote of yeas 29, nays 25, decided that the motion was in order. A second point of order, made by Mr. Lyman Trumbull, of Illinois, that an order partially executed might not be rescinded, was also overruled, yeas 24, nays 30.

After propositions to amend and to adjourn had been disagreed to, the motion of Mr. Williams was agreed to.

2443. President Johnson's impeachment continued.

Having voted on three of the eleven articles, the Senate sitting for the trial of President Johnson adjourned without day.

Before announcing the adjournment voted by the Senate, the Chief Justice directed the Clerk to enter a judgment of acquittal of President Johnson.

Form of acquittal entered in the Journal of the trial of President Johnson.

The acquittal of President Johnson was announced in the House through the report of the chairman of the Committee of the Whole.

Thereupon, on motion of Mr. Williams, the Senate decided to proceed to vote on the second article of impeachment.¹ And the second article having been read, the question was put in the prescribed form, and the Chief Justice announced:

Thirty-five Senators have pronounced the respondent, Andrew Johnson, President of the United States, guilty; nineteen have pronounced him not guilty. Two-thirds not having pronounced him guilty, he stands acquitted upon this article.

In a similar manner the Senate determined to vote on the third article, and the vote having been taken, and having resulted 35 guilty and 19 not guilty, the acquittal was pronounced as before.

Thereupon Mr. William moved—

That the Senate, sitting for the trial of the President upon the articles of impeachment, do now adjourn without day.²

And there appeared yeas 34, nays 4.

Before announcing the result the Chief Justice said:

The Chief Justice begs leave to remind the Senate that the twenty-second rule provides that "if the impeachment shall not, upon any of the articles presented, be sustained by the votes of two-thirds of the members present, a judgment of acquittal shall be entered." * * * The Clerk will enter, if there be no objection, a judgment according to the rules—a judgment of acquittal.

And the Journal has this entry:

The Senate having tried Andrew Johnson, President of the United States, upon articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present not having found him guilty of the charges contained in the second, third, and eleventh articles of impeachment, it is therefore

Ordered and adjudged, That the said Andrew Johnson, President of the United States, be, and he is, acquitted of the charges in said articles made and set forth.

The Chief Justice then announced the vote on the motion of Mr. Williams to be yeas 34, nays 16; and thereupon declared the Senate, sitting as a court of impeachment for the trial of Andrew Johnson,

¹Senate Journal, pp. 948, 950; Globe supplement, pp. 414, 415.

² Senate Journal, pp. 950, 951; Globe supplement, p. 415.

President of the United States, upon articles of impeachment exhibited against him by the House of Representatives, adjourned without day.

After this adjournment the House of Representatives returned to their Hall, and the Speaker having resumed the chair, Mr. Washburne, of Illinois, made the following report:

The Committee of the Whole have, according to order, attended the managers to the bar of the Senate, sitting as a court of impeachment for the trial of Andrew Johnson; that the respondent has been declared to be acquitted on the second and third articles severally preferred by the House; and that then, without action on the other articles, the Senate, sitting as a court of impeachment, adjourned sine die.¹

¹House Journal, p. 735; Globe, p. 2587.